The Bench and Bar of England

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BY

J. A. STRAHAN

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TO

NORAH MARY STRAHAN,

TO WHOM,

IF TO NO ONE ELSE,

THESE RECOLLECTIONS AND REFLECTIONS
OF HER FATHER MAY BE INTERESTING.

PREFACE.

COME next January, it will be just forty years since I was entered of the Middle Temple. Since then I have practised at the Criminal Bar, gone the Midland Circuit, and been an Equity draftsman and conveyancer in succession; for about a dozen years I was on the reporting staff of a law paper, when my duties necessitated my spending nearly all day, nearly every day, in Court; and practically ever since my call I have been

a writer of law-books and a lecturer and examiner in law in both England and Ireland. From all which it will appear that my personal experiences of law and lawyers, though they may not be very deep, are sufficiently broad and varied. It is on these personal experiences that the following rambling recollections and reflections are based.

An Irish judge being asked what a certain writer meant by entitling the narrative of his adventures in foreign parts his personal experiences there, answered that he did not quite know, but lawyers used the term personal to describe things that are not real. That observation does not apply in my case. My personal experiences are real: what I say I have seen or heard I have in fact seen or heard,

though of course I cannot say whether the things I have seen were not make-believe, and the things I have heard were not romance.

No doubt some of the anecdotes which I have given as illustrations, and which I have not given as from my own observation, are, as I have said of one of them, rather well found than well founded. When I remember with any sureness where or from whom I first heard any of them, I have given it in the text. But many of them are from no definite source, being common gossip of the Bar; and many others came, I believe, to my knowledge through my long friendships with the late Mr T. H. Carson, K.C.; with my former colleague, Mr Arthur Underhill of the Chancery Bar; and with

my present colleague and former pupil, Professor Sinclair Baxter of the North-East Circuit, Ireland.

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J. A. STRAHAN.

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THE
BENCH AND BAR OF ENGLAND.

I.

JUDGES AND JUDGES.

To the layman every judge is equally a judge; but to the lawyer there are judges and judges. There are some judges whose ruling on any moot point of law is taken as settling it for ever: there are others who, to use Lord Ellenborough's phrase, are fit only to rule copybooks. The strange thing is that the great judges are as

often as not found among those who have obtained promotion to the Bench by favour; while the small judges are not unfrequently found among those who have earned their promotion by success in practice. There are two modes of succession known to the law: succession *per stirpes*, or by the family, and succession *per capita*, or by the head. Lord Westbury, in his sardonic way, once said that persons bearing a certain name well known in the legal world, succeeded to places on the Bench *per stirpes* and not *per capita*. To a certain extent that was true, since few of that name ever won much reputation at the Bar; yet it might be said that scarcely one of them who obtained promotion ever failed to win a reputation on the Bench. The qualities required to gain success as a judge and

as an advocate are essentially different; and it is but rarely that you find them both combined in the same person.

For instance, nothing is more necessary to success as an advocate than self-confidence: possibly nothing has led judges into more or worse errors than that same quality. It is a common saying that the fifteen years which a judge must serve to qualify for a retiring pension may roughly be divided, as ancient Gaul was, into three parts. During the first five years, the judge is always afraid he is wrong; during the second, he is always sure he is right; and during the third, he does not care twopence whether he's wrong or right. But in fact some judges, from the day they are preferred, are always sure they are right — so sure indeed that they will not listen to any

argument or evidence which tends to show that they are wrong. Such men are often called by the lay press and public "strong" judges. Many of these so-called strong judges have had reputations among lawyers which no man need envy. It is not too much to say that one of them, who died not long ago and whose name was never mentioned in the daily papers without unrestrained praise, was regarded by most counsel practising before him as nothing less than a perverter of justice. Many a rogue, who attracted his favour by cleverness or impudence, escaped the punishment he richly deserved; and many an honest man was ruined through his practical refusal to listen to his case. Fortunately for litigants, there have been few English judges quite so "strong" as ——.

Weak judges do far less mischief than strong judges of this sort. The mischief they do is not in the perversion, so much as in the degradation, of justice. It does not conduce to the dignity of the law to have a judge constantly overborne in his own court by masterful counsel. There was in Henry Brougham's time a certain judge so much under the influence of Pollock, afterwards Lord Chief Baron, that when Pollock and Brougham were pitted against each other before him, Brougham used to appeal to Pollock not to rule on any point until, at any rate, the judge had an opportunity of submitting a few observations for his consideration. That was a gentle reminder to the judge that he was not quite master in his own court. A brutal one was the retort of General Butler of

the American Bar. He was one of several counsel appearing in a case, all of whom agreed in disregarding the very existence of the judge. At last his honour in desperation cried out, "Gentlemen, gentlemen, what am I here for?" Butler paused and pondered. Then, passing his hand over his forehead, he said, "By the holy, your honour has me there!"

Perhaps, however, the weak judge does less to degrade justice than the "judicial humourist." The judicial humourist has rarely a greater sense of humour than his graver brethren: he has merely a lesser sense of dignity. He is always on the look out for the chance of making a joke; and very often he ends in joking, not merely decorum, but justice itself out of his court. His object is to create a laugh, and seldom

does his joke fail to do that, and as seldom does it succeed in doing anything more: it reads but poorly in print, looking in that cold medium too like the jest, not of a wit, but of a buffoon. Probably the three most witty men on the English Bench in recent years were Lord Chief-Justice Coleridge, Lord Bowen, and Lord Macnaghten—(if one wishes to enjoy a remarkable display of humour, learning, and literature, he cannot do better than study the judgment of Lord Macnaghten in *Van Grutten* v. *Foxwell* [1897], A.C. 658). But nobody ever regarded any of them as a judicial humourist. They never forgot that the business of a judge is a grave one, and they transacted it gravely.[1]

[1] Probably the most ghastly case reported of misplaced judicial humour in grave matters is the remark which

It is the view of the public that the mere elevation of a barrister to the Bench gives him learning, whether he possessed any before it or not. The view of the law itself is not very different. The late Owen Meredith once said that the King could accomplish things beyond the power of Heaven itself; and, when asked for an example, he stated that the King, by making her husband a knight, had made a certain woman a lady. In the same way the King, by making him a judge, can make an unlearned lawyer an authority on law. But though the King can make the world accept an unlearned lawyer for learned, he cannot give him

Lord Norbury is reported to have addressed to a prisoner, after he had sentenced him to death for stealing a watch: "You snatched at time, my man, but you see you have caught eternity."

learning. And judges, however blind they may be to their own imperfections, are, as Lord Bowen put it, deeply conscious of each other's deficiencies. Lord Justice Christian, when he was Chief of the Irish Court of Appeal, used to display this consciousness in his own way. When his two colleagues differed in opinion, each of them stated his decision and his reasons for it before the Chief; and, when the Chief gave his, it sometimes took this laconic but not flattering form: "I agree with the decision of my brother on the right for the reasons so admirably stated by my brother on the left." And counsel, too, sometimes show their views of the learning of the Bench in nearly as uncomplimentary a way. Every one remembers the reply of the oldest and most learned lawyer of his

time, Serjeant Maynard, to the brutal observation of Judge Jeffreys, that he had grown so old he had forgotten his law. "It is true I have grown old and have forgotten some of my law," replied the ancient Serjeant; "indeed I have forgotten more than your lordship ever knew; and I have not forgotten much." A young counsel displayed his opinion of the learning of the Bench as clearly if not as consciously. He had argued a case, and to his surprise and indignation the judge decided it against him. He appealed, and when opening his case in the Court of Appeal, he began by stating and explaining at great length some most elementary legal principles. At last the judges became impatient; and one of them said, mildly enough, "Don't you think, Mr Smith,

you might assume that the Court knows some law?" "No, no, my lord," answered the young barrister hastily; "that was just the mistake I made in the court below."

As to the moral conduct of judges a *laudator temporis acti* once summed up to me the difference between the judges of former days and those of our own. He said that formerly judges, when on the Bench, never forgot they were judges, and when not on the Bench, never remembered it; but now judges, when on the Bench, never remember they are judges, and when not on the Bench, never forget it. Being, as I say, a *laudator temporis acti*, he professed his preference for the old style. Certainly his statement was accurate to this extent: it is rarely nowadays that a judge when

off the Bench forgets that he is a judge. The old habits of free living, and especially free drinking, which characterised alike the Bench and the Bar of a hundred years ago, arose largely through the circuit system, which then turned judges and counsel for half the legal year into sets of roving, homeless bachelors. At the beginning of an assize, then, they closed their courts and chambers, packed their traps, and went off to the country, not to return to their wives and families for several months, and while away they lived a free and easy and most convivial life. The railways and the growth of local Bars have put an end to all that. Now counsel from London run up by an early train on commission day to the county town where they hope to get briefs; if they get any they re-

main till they are disposed of; if they find the local Bar have got them, they return the next day to town. Thus one will frequently find a hundred barristers assembled at circuit mess on the first night reduced to a dozen on the second or third.

Lord Morris used to tell a story which was an echo of past days and ways. He was driving from Galway to his family seat at Spiddal, when he passed an acquaintance who was chatting by the roadside to an ancient road-mender. The judge saluted his friend. When he had disappeared the ancient road-mender asked the friend, "And who, now, might that gintleman be, sor?" The friend said, "He's Lord Morris, the judge." "And ye tell me he's a judge, sor," commented the ancient road-mender in a

reflective way. "Ye tell me he's a judge. Well, I've seen him, man and boy, dhriving along this road these fifty years, and I niver saw him wance the worse for dhrink. And ye tell me he's a judge."

One of the most remarkable characteristics of the English Bench — and Bar too for that matter—is its hearty welcome to ability, come whence it may. In that respect London resembles Rome: among the great names of Roman jurisconsults none were greater than Scævola, Papinianus, and Ulpianus; and yet none of these were Romans. In the same way there are no greater names among English nineteenth-century lawyers than Cairns in Equity and Willes in Common Law; and yet the first hailed from Belfast and the second from Cork. In Equity Jessel may be a rival to

Cairns: at any rate, he thought so himself. My wife's uncle, the late Sir Alfred Dryden of Canons Ashby, who read in the same chambers as he, told me that towards the end of his career he used to say in his own English, "'Istory will sy that the three greatest Chancery men were 'Ardwicke, Cairns, and me." If history does say that, then Hardwicke will be the only Englishman, for Jessel was a Jew. At this moment the Lord High Chancellor of Great Britain is a Scotsman, who succeeded another Scotsman (Viscount Haldane),[1] who himself succeeded a third Scotsman (the Earl of Loreburn), who in turn succeeded that

[1] This is incorrect. I forgot when writing it that Lord Buckmaster was Lord Chancellor for a few months after Lord Haldane retired and before Lord Finlay was appointed. Since it was written Lord Birkenhead, an Englishman, has become Chancellor.

venerable Irishman, the Earl of Halsbury, in that great office; and the Lord Chief Justice of England is a Jew like Jessel.[1]

This generous disregard of prejudice, national or religious, strikes every one accustomed to the narrower provincial feeling in Scotland and Ireland. Lord Morris, shortly after he was appointed one of the Law Lords, was asked what he thought of the supreme tribunal. He answered, "I think the English are a long-suffering people. There is the

[1] Mr J. Murray Clark, K.C., has drawn my attention to a remarkable anecdote related in an address delivered by him as President of the Royal Canadian Institute, on the "Reign of Law": "Over a quarter of a century ago a member of the firm of solicitors for the Bank of England remarked to the Attorney-General of Ontario, then in one of the courts in London, 'Do you see those three Scotsmen? Every one of them will become Lord Chancellor of England.'" Those three Scotsmen are now Lords Loreburn, Haldane, and Finlay.

highest Court in their Empire, and what does it consist of? Why, three Irishmen, two Scotchmen, and a miserable ould Jew." The disrespectful description was intended to apply to the late learned Lord Herschell, C.

II.

JUDGES AND COUNSEL.

The lay public think that the qualification for becoming a judge is to have become a distinguished leader of the Bar. This is a mistake: there are many distinguished leaders of the Bar who will never be judges; and there are many judges who were never distinguished leaders of the Bar. The only qualification for the Bench known to the law is to be a barrister of ten years' standing: all the rest remains with the Lord High Chancellor: what further qualifications he

may require depends upon his individual idiosyncrasies. Lord Lyndhurst openly stated the principle on which he proceeded. "When I want a judge," he said, "I look round the Bar for a gentleman; and if he knows a little law, so much the better." That was, perhaps, as good a principle of selection as is possible, considering all the circumstances. At any rate, it is better than that followed by a later Chancellor. "People say that my last three appointments to the Bench are a public scandal," he said indignantly. "Well, all I can say is this: it would, in my opinion, have been a much greater public scandal if three respectable, straight-voting county M.P.'s had had to end their careers in the Court of Bankruptcy."

Once, however, a counsel becomes a

judge, the lay public, whatever they thought of him when at the Bar, take him at his face value. I have already pointed out that the law does much the same, since his opinions on points of law, which before his elevation were possibly not thought worth five guineas apiece, are, after his elevation, absolute declarations of the law binding upon the whole realm, save and except the Court of Appeal and the House of Lords. Considering this, it is hardly to be wondered at that the barrister, when made a judge, should himself commonly take the same view as to the effect of his exaltation. That view it not, however, by any means universally shared by his old companions at the Bar. Sometimes this difference in opinion leads to a little friction between judges and counsel. I remember once a

newly-appointed judge, whose career at the Bar had been far from illustrious, having the folly to tell the greatest cross-examiner in England that his cross-examination of a witness was wearisome and pointless. The greatest cross-examiner glared at his lordship in speechless amazement for a moment; and then he replied fiercely, "Oblige me by holding your silly tongue until somebody speaks to you." That was a rude way of showing a judge what counsel thought of him. Curran's way was more civil and also more effective. He was addressing the jury, and the judge irritated him by constantly shaking his head to indicate to the jury that he did not agree with what was being said. "Gentlemen of the jury," commented Curran at last, "you may have noticed his lordship

shaking his head. I ask you to pay no attention to it; because, if you were as well acquainted with his lordship as I am, you would know that when he shakes his head there is nothing in it."

This will show that judges are sometimes noted for want of judgment. Not so often they are also noted for want of manners. Where this fault displays itself, it is usually before long gently but firmly corrected by the Bar. The inexperienced junior may tremble under the rough tongue of the judge; but the experienced and established leader contrives to repay in kind, sometimes in a measure brim full, pressed down, and flowing over. That was the case in an encounter between the late Oswald, K.C., and an unlearned and underbred judge. (By the way, Oswald was the author of

a treatise on 'Contempt of Court,' which, his fellow-barristers insisted, was all based on personal experience.) The unlearned and underbred judge, after a tussle with Oswald, in which he had come out second best, had announced angrily that he could teach him neither law nor manners. "I respectfully agree, my lord," answered Oswald blandly; "you could teach nobody either." And it was Sir Charles Russell who, when a judge from the Chancery side who knew not Russell rudely interrupted him again and again, threw down his brief and said, "My lord, what may be the manners of the place whence you came I know not; but I do know that on this side the judges treat the Bar as gentlemen, and, as long as I am of the Bar, I will submit to be treated in no other way."

Without more, he left the court. The judge hastily sent a messenger after him; and when he came back humbly apologised, and interrupted no more.

At the same time the bearing of the average counsel towards the judge is usually so deferential as to verge on the abject. The reason of this is not, as a rule, want of courage to stand up to the judge: it is regard of the counsel for his own interests. Solicitors dislike counsel who quarrel with the judge, unless they are men big and strong enough to crush him. Nothing will persuade them that the decision of a case very often does not depend so much on the evidence and arguments submitted to, as on the feelings entertained by, the judge. Accordingly, if a barrister, not at the top of the Bar, gets the reputation among

them of being personally objectionable to the Bench or any considerable portion of it, his practice is as good as ruined. This is very unfair to counsel, and still more unfair to judges. Most experienced barristers know that rarely indeed does any judge allow his likes or dislikes of counsel personally to affect his judgment in cases in which such counsel appears. Far more frequently that judgment is affected by the kind of work in which that counsel is retained. If judges observe that a certain barrister frequently appears in shady cases or for shady clients, they look with suspicion and distrust on any business in which he is engaged.

While few judges are either ill-natured or ill-mannered, not a few of them are ill-tempered, or, rather, what is commonly known as "peppery." It is true some

judges are, if anything, over good-tempered. It used to be said of the late Mr Justice Lawrance—affectionately known on the Midland Circuit as "Long Lawrance"—that he was of so amiable a disposition that nothing could exasperate him except a point of law. Such judges, however, are rarely of the first flight. Most competent men are, especially when growing a bit old, a bit peppery. Usually this pepperiness is confined to one or two points which counsel, who are accustomed to appear before them, know well and take care to avoid. For instance, there was no judge of his time with a kinder heart or a better head than the late Lord Esher, for many years Master of the Rolls; but he was very peppery on points. One of these points was the way some counsel have

of citing cases so rapidly that they are discussing a new case before the court has had time to consider the effect of the previous one. Once a hurried and nervous counsel was arguing before Lord Esher, and citing case after case in support of his argument so quickly that Lord Esher quite lost his bearings. Counsel always gave his references to the cases cited as so-and-so "Q.B.D." At length Lord Esher demanded angrily, "What do you mean by Q.B.D.?" Counsel replied in amazement, "Why, my lord, Queen's Bench Division, of course." "Well," answered Lord Esher, gazing at him with indignant, burning eyes, "if you mean Queen's Bench Division, why don't you say Queen's Bench Division? When counsel keeps heaving at my head every second this

Q.B.D. and that Q.B.D. and the other Q.B.D., I feel inclined to say to him, U.B.D."

As I have said, there was no kinder heart or better head on the Bench in his time than Lord Esher's; but he certainly was injured by his irascibility. Sometimes when I watched him fuming in court I was reminded of the story told by Gronow of a predecessor of his of a similar temper, Sir Pepper Arden, afterwards Lord Alvanley. Once, Gronow says, a Frenchman, who spoke no English, accompanied by an interpreter, visited Sir Pepper's court. Sir Pepper happened to be in a fiery state at the time. The Frenchman was startled by the heat he showed, and asked the interpreter his name. The interpreter, translating it literally from English into French,

answered "*Le Chevalier Poivre Ardent.*" "*Parbleu,*" muttered the Frenchman, "*il est très bien nommé!*"

When a judge sits with colleagues, as Lord Esher did, his irascibility, especially if he is also an able man, has a worse influence on the Bench than on the Bar. It tends to cause the colleagues, who desire a quiet life, to acquiesce with the irascible one whenever they can do so without actually outraging their consciences, and to lead the colleagues who are fighters to seek for grounds for dissenting from him. While Lord Esher presided over the first division of the Court of Appeal, he had more than one coadjutor who might well have adopted the title which Lord Bowen said he intended to take when called to the House of Lords —that of Lord Concurry; while at least

one of them might be properly described as a conscientious objector.

Just as every private of the great Napoleon's army carried a field-marshal's baton in his knapsack, so every member of the Bar of England wears under his black robe the ermine of a judge. And this operates entirely for the public benefit. The judge seldom forgets that he was once a barrister, and the barrister seldom forgets that he may one day be a judge. This solidarity inspires in both of them a sense of mutual confidence and reciprocal honour such as prevails in no other profession except perhaps the Navy and Army; and that sense facilitates business enormously, more especially on the Chancery side, where judge and counsel know one another more intimately than is possible in the larger and more varied world of

the Common Law. Often on the Chan cery side, when *ex parte* applications are a de in important and complicated matters which, if discussed in detail, would occupy hours, all that passes between the judge and counsel is this: "Well, Mr Smith," the judge will say, "this is all right, I suppose?" "Quite right, my lord." "Take your order."

The judge trusts implicitly to the word of counsel, and his trust is never betrayed.

III.

COUNSEL AND CLIENTS.

Some years ago, about a week or more before the commencement of one of our very long Long Vacations, I happened to meet a lay friend who was involved in a heavy action. I asked him how it was getting on, and he told me that his counsel had applied to have it heard before the Vacation, but the application had been refused by the court.

"This was very inconvenient for me," he added, "and I was annoyed at it; but not half so much as Jones," who was his

leading counsel. "He told the judge plainly that it was grossly unfair to me, and was so vexed that he got into quite a temper."

Now, I knew Mr Jones. He was a man who never came into court without having read his brief; but he was certainly not a man I should suspect of losing his temper because his client was inconvenienced. So I asked my friend if Mr Jones had said anything to his junior.

"Well, yes," my friend replied; "he said he was glad he had made an exhaustive note of the case, as it would save him a lot of work when it came on again."

That explained "the grand choler of the Father" Jones. He had made up his brief laboriously, as he always did, and he

was vexed at the delay, because he knew that by the end of the Vacation he should have forgotten all about it.

No man can get through a great leading practice at the Bar unless he not merely learns to learn quickly, but also learns to forget quickly what he has learned. So a young barrister friend of mine was taught at his first conference with the late Sir Charles Russell.

The junior counsel in an intricate case had suddenly died, and my friend was fortunate enough to get his brief. The case was one which raised many points, and had been already several times before the court. My friend had little time to make it up; but this did not disturb him, as Sir Charles, who was leading him, had argued the case on the occasions when it had been previously considered; and so,

he assumed, was familiar with all the facts. At the conference, however, much to my friend's amazement, the first question which Sir Charles put to him, in his brusque peremptory way, was, "Well, what is this case all about?"

"Why, Sir Charles," replied my friend awkwardly, "I thought you would know more of it than I possibly can."

"I know nothing about it," said Sir Charles.

"But," persisted my friend, "you have argued it three times already."

"I tell you I know nothing about it," answered Sir Charles angrily. "If I remembered all the facts in all the cases I have been in, what sort of a thing would my head be now, do you think?"

In fact, to be able to continue to learn quickly one must be able to forget

as quickly; and lawyers who attain to great practices develop a power of acquiring and forgetting knowledge of all sorts of things—facts, figures, history, science, law—with a rapidity that amazes their coaches. In politics it is much the same. A friend of mine, who had a good deal to do in that way with the late Mr Joseph Chamberlain, told me that nothing astonished him so greatly as the quickness with which he mastered the ins and outs of all sorts of difficult and intricate questions, except the astounding quickness with which he forgot everything about them. Unfortunately for myself, I was never, either in law or politics, able to learn to forget.

This superficial knowledge of a subject is often acquired so intelligently and used so skilfully that counsel has the

advantage over witnesses whose professional business is to know it. That is especially the case when the witnesses are medical men, who are usually the least expert of experts. As might be expected, however, when knowledge is "sweated up," as barristers call it, there are usually vast *lacunæ* in it, which, when discovered, reveal the abysmal ignorance which lies behind. I well remember an instance of such a revelation. It occurred in a patent case: the patent was for some electrical contrivance, and the late Lord Kelvin (then Sir William Thomson) was the chief witness for one side. He was being cross-examined by the leading counsel for the other side — a distinguished Q.C., whose extraordinary gift for grasping quickly abstruse scientific points brought him an immense practice

in patent cases. He put his questions something in this way: "Now, Sir William, wouldn't you say 'so-and-so.'" "I wud," answered Sir William in his Northern accent. "And wouldn't you say that 'so-and-so' followed from that?" "I wud," answered Sir William. "And wouldn't you say that 'so-and-so' followed from that?" "I wud," answered Sir William. "And now, Sir William," put the Q.C. in a triumphant tone, "after what you have admitted, wouldn't you say that 'so-and-so' must of necessity follow from that?" Sir William paused before replying. Then he said slowly, "I wud—if I knew nothing about electricity; but I know a deal." In half a dozen sentences he explained how what of necessity followed was just the reverse of what his cross-examiner suggested.

The distinguished Q.C. listened in silence, and, when the sentences were ended, showed his power of grasping quickly abstruse scientific points by sitting down without asking another question. I have often wondered what the subsequent interview between him and his coach was like.

But all this is something of a digression. The point I had in my mind when I referred to the conversation with my litigant friend was to illustrate the manner in which lay clients, at any rate, will insist on confusing the man with the advocate. When a client, by his solicitor, retains counsel to plead his cause for him, he is simply employing for pay a man to do for him work in which that man has or is supposed to have special experience and skill. But nothing will

induce the average client to view the transaction in that light. He will insist on thinking that when counsel strongly urges the justice of his cause, he is doing so not because he is paid to do it, but because he believes that the cause is just. He fancies, too, that counsel is as deeply interested in his cause as he is; feels the same anxiety as to the result that he does; and is as much concerned when that result proves unhappy. "Weel, weel, sir," a Scottish farmer said to his advocate, who was condoling with him on the hostile verdict of the jury—"weel, weel, sir, I'm gey gled to be red o' it on ony terms, and if you hae spent as mony sleepless nichts ower it as I hae you'll be the same." It never occurred to the honest man that, if the advocate spent sleepless nights over every case

which he conducted, he would soon not be in a condition to conduct cases at all.

Sometimes this dream of clients that their counsel believe implicitly in the justice of their cause has unexpected awakenings. The great Erskine was once defending in a murder case. The murder was a most atrocious one, and the prisoner was the murderer. Erskine defended him with his usual vigour and earnestness; his final address to the jury was particularly fervent and moving. Nevertheless a callous judge charged straight against the prisoner, and an equally callous jury promptly convicted him, and he was ordered to be hanged by the neck till he was dead, on the very next day, as the custom then was.

Convinced that Erskine believed in his

innocence, the prisoner, before being removed from the dock, leant over the bar and whispered—

"Mr Erskine, Mr Erskine!"

"Well?" said Erskine.

"Mr Erskine, I have not received justice," said the prisoner.

"No," replied Erskine, "that's quite true; you have not received justice. But," he added cheerfully, "you'll get it all right to-morrow."

This confusion of the advocate with the man makes many clients fiercely distrustful of a counsel who, before the case comes into court, advises them that there is no chance of success. One striking instance of that feeling I have reason to remember. A large landowner, now deceased, who was himself of a quarrelsome nature, had the misfortune to grant a lease of one of

his farms to a very quarrelsome tenant. The very quarrelsome tenant had an even more quarrelsome son, whom he appointed manager of the farm at a yearly salary. The son was soon on fighting terms with the landlord, owing to his unreasonable claims and objections and general perverseness, until at length the landlord, by his agent, wrote telling him that he was not the tenant, but his father was, and that henceforth all communications must be made through the father. Shortly afterwards the son, having privately developed very strained relations with the father, wrote to the landlord offering to surrender the lease at the end of the current year ; and the landlord, who now was on strained relations himself with the father, and eager to get rid of both of them, precipitately accepted the son's

offer. It was some time before the father heard of the son's offer, and when he did, he promptly quarrelled out and out with the son, expelled him from the farm, and gave the landlord notice that the son had no authority to surrender the lease. The landlord insisted that the lease had been surrendered, and that the farm must be given up at the end of the year. The tenant refused absolutely to give it up.

Counsel was instructed to advise whether on these facts the surrender was good. He advised that it was not. The next instructions which he received were to draft, on behalf of the landlord, a statement of claim in an action for possession of the farm. He drafted it, but put a note "in the fold" that, in his opinion, the action must fail, and he advised an attempt

to settle. The landlord's solicitor saw him, told him he quite agreed that the action must fail; but they must go on with it, as the landlord swore that if the court did not turn out the (unmentionable) tenant, he himself would do so by force; and this would be a great scandal, since the landlord was Lord-Lieutenant of the county. The case went on. When ready for trial, an eminent K.C. was briefed to lead the counsel. The K.C., when he had perused his brief, agreed absolutely with his junior that there was no case; but there was then nothing for it but to fight it as best they could. They did so, and, as both of them expected, the action was dismissed. The landlord had the insolence to tell them that they had not tried to win it, because they

had advised it would fail, and they wanted to justify their advice.

This is an extreme case. But something of the same kind is constantly occurring, — so constantly, that to my knowledge some leading juniors refuse to accept briefs where they have definitely advised that there is no case. But this, to young juniors who are only fighting their way into practice, requires a heroic sense of honour, since it may mean the loss of a client when clients are very few; and, accordingly, it is to be feared that some of the less conscientious of them sometimes affect a confidence in cases submitted to them which they do not really feel, and thus encourage clients to proceed with actions which they privately regard as at least as likely to end in defeat as in victory.

While the tendency of the average lay client — and to a certain extent the solicitor — is to confuse the man with the advocate, the tendency of the public generally is to confuse the advocate with the man. The process of reasoning seems to be this: Because a barrister is willing to advocate professionally any private cause for which he is paid, so he is willing to advocate personally any public cause that is likely to pay him. This is an absolute *non sequitur*. It confuses the duty which he owes to his client with the duty which he owes to his country. Those duties are absolutely different. As an honest barrister, his duty to his client is to do his best for a private cause whether he thinks it right or wrong. As an honest citizen, his duty to his country is to do his

best for a public cause only when he thinks it is right. To fail to do his best as a barrister because he thinks his client's cause is wrong, would be dishonourable. To do his best as a citizen because he thinks a public cause will profit him, would be dishonourable. And as Lord Erskine said a century ago (and he had, before he came to the Bar, served as an officer both in the Army and in the Navy), there is no profession in existence in which the standard of honour is higher than it is in the profession of the law.

It is this confusion of the advocate with the man which gives rise to the popular distrust of what are called lawyer politicians. That distrust is wholly impersonal, and rarely damages individual counsel who take to public

life. In fact, the barrister is a very popular and successful candidate, no matter what party it is to which he attaches himself. This is largely due to his professional training. That training makes him anxious to hear all sides of a question before he decides which side is right. It was a lawyer (Sir James Stephen) who regretted that we had not the Serpent's version of the story of the Fall of Man; and it was a lay magistrate who wished he could decide cases without hearing the evidence for the defence, since when he heard that it so often bothered him. Again, their professional training tends to make them tolerant of the weaknesses, prejudices, and even follies of mankind. Often when a country gentleman or a business man would lose all patience and alienate

still more his critics, a lawyer, by a good-natured jest or a genuine attempt to understand their point of view, will conciliate them. Was it not a lawyer, the Catholic counsel Keogh, who, at an Irish election, when a stout Protestant told him he would rather vote for the Devil than for him, gained his vote by the sweet reasonableness of his reply: "I quite see your difficulty," he said, "and can ask you to support me only if your friend does not stand"?

I have already referred to the curious fact that clients think their counsel are concerned as much as they are when cases end in disaster. A barrister always wishes to win his cases: it is in that way that professional renown is gained. But when a case goes against him—and he usually has a shrewd notion

what way a case will go before it is opened—he takes the result very philosophically. This is largely due to the fact that in civil cases, as often as not, so far as justice is concerned, it matters little what way they go. Many cases on the Common Law side are simply personal quarrels, much on the moral level of dog-fights. The landlord and tenant case I have stated is not a bad example of these. The courts here are useful chiefly as a vent for passions which, if there was no recourse to them, would find an outlet through lethal instruments in the streets. Many cases on the Chancery side are little better. They are merely struggles among packs of ravening relatives or legatees—who too often have flattered or fooled the deceased to the prejudice of juster claims

—to get as much as they can of a dead man's estate. I have sometimes thought that the sooner freedom of testation, which is limited in every Continental country, is also limited in England, the better for honesty and justice. As for the law of intestate succession, which often carries a large fortune to the pockets of distant relatives of whose existence the deceased never knew, it is one of the most imbecile of institutions. Nowadays, when a man's widow and children are deprived by death duties of a large and ever larger proportion of the wealth which the husband and father toiled and strove to earn and save for them, it seems nothing short of a public scandal to allow unknown or unloved relatives of distant degree to seize riches which the intestate never intended for

them, and to which they have no moral claim, and to make his king and country the last of all possible claimants to his estate. Besides, the distinctions on which some claims succeed and others fail are often "more important in principle than in substance," as the Irish Catholic counsel said of the distinction between Calvinists and Presbyterians when that distinction was kindly revealed to him by a brother barrister who was an Ulster Orangeman. "It is this way, you know, Gerald," said the Orangeman. "The Calvinists believe that all you Papishes go to h—l by predestination. You see it, Gerald?" "I understand," said the Catholic. "Now, on the other hand," the Orangeman proceeded emphatically, "we Presbyterians don't believe that at all. Do you follow me, Gerald?" "I

do," answered the gratified Catholic. "No," the Orangeman went on, "we Presbyterians believe that all you Papishes go to h—l on the merits." And thereupon the Catholic remarked that the distinction seemed to him more important in principle than in substance.

In criminal cases the issues are very different from the usual issues in civil cases. Whether a man is guilty or innocent of a crime is always a grave question which the law and the lawyers are bound to inquire into and determine with vigilance, wisdom, and mercy. And no men recognise this more thoroughly than do the barristers of England. Here they feel that they, almost as much as the judges on the Bench, are the ministers of national justice. There is no indifference among them then as to the

result of their cases or as to the fate which befalls their clients. And where, in their opinion, that result is unjust and that fate undeserved, they spare no pains to undo the evil which they believe has been done. Just as in Scotland, nearly two hundred years ago, Duncan Forbes of Culloden, when President of the Court of Session, uncovered and bowed his head when he passed on Leith Links the gibbet where Captain Green had been, in his opinion, unjustly hanged; so, in England in our own day, Charles Russell of Killowen, when Lord Chief Justice, toiled unceasingly for the liberation and vindication of the unhappy Mrs Maybrick, whom he, when at the Bar, had defended, had believed innocent, and had failed to save.

IV.

COUNSEL AND WITNESSES.

It was a case in which there had been "some" swearing. Counsel was addressing the jury, and in doing so was trying to reconcile the evidence of his witnesses with some indisputable facts of the case. Lord Chief Justice Coleridge, who was the judge, grew a little impatient and intervened. "Surely, Mr Smith," he said, "the real explanation of all these contradictions and inconsistencies is" so-and-so. "If we adopt that view, my lord," replied Mr Smith, "it will no doubt explain

them; but the difficulty is that to adopt it we must assume that all the witnesses on both sides have been perjuring themselves." "If that, Mr Smith, is the only difficulty," answered Lord Coleridge in his suavest style, "I do not think it is unsurmountable."

The prevalence of perjury in the courts is to-day the chief impediment in the way of a righteous administration of the law; most lawyers will admit this. Most candid lawyers will go further, and admit that the prevalence of perjury in the court is partly due to the law itself. Falsehood and law were long close friends. This may surprise the lay reader; but it is a historical and undeniable fact. I will give just one example: a score might easily be given.

In the year of our Lord 1285, Parlia-

ment in its wisdom enacted a statute called from its opening words the Statute *De Donis Conditionalibus.* The object of this Act was—as its name indicates—to ensure that the condition on which a gift was made should be observed. The gifts to which it applied were grants of land made to a man "and the heirs of his body," which is the legal way of saying to a man and his descendants. The courts had held that such a gift meant merely a gift on condition the man had descendants; and, accordingly, when children were born to the man, the condition was satisfied, and he could deal as he liked with the land. The great lords objected to this interpretation—which in fact was not what was intended—and succeeded in persuading Parliament to enact that such a

grant in future should be held to be a grant to the man and to his descendants; and, as such, on the death of the man the land must go to his descendants, and on the failure of his descendants must revert to the grantor. Now the King did not like this statute at all: it tended, and was intended, to preserve the power of the great lords by keeping their immense estates intact and in their families; and the King's wish was to weaken the great lords' power, which sometimes proved stronger than his own. His Majesty's judges were then his Majesty's most obedient servants, and, accordingly, they made haste to gratify the King's wish by practically repealing the law which they were appointed to enforce. They did this by instituting a system of collusive

actions called Common Recoveries. The process in these actions was much too technical and intricate to be explained in a book such as this; for our present purpose it is enough to say that it was based on protection extended by the court to open and avowed falsehood. A witness called technically the vouchee to warranty, who, as the judge knew, had never seen the land granted to the defendant and the heirs of his body, boldly told the court that it was he himself who granted it and warranted the title to the grantee; and the judge professed himself so deeply impressed by this statement that he would not allow anybody to contradict it. Then the plaintiff craved "leave to imparl" with the vouchee, who left the court with him and did not return. The court

thereupon adjudged that the demandant (or plaintiff) was the real owner of the land, and gave the tenant (or defendant) judgment against the vouchee who had so cruelly sold to him land he did not own. This form of legal lying was so common and profitable that certain gentlemen followed it as a trade. They hung about the precincts of Westminster Hall with a straw in their caps, to indicate their readiness to lie: hence, it is said, the expression, a man of straw. In later times, for speed and convenience, the usher of the court acted as common vouchee, and told all the lies necessary for the proper administration of justice.

The collusive action and the false assumption, supported when necessary by perjury, and protected by the court, is one of the oldest of legal institutions.

In Roman Law *in jure cessio* ranks with *mancipium* and *nexum* as dating from before the commencement of legal history. And, queer as it seems, these "legal fictions," as they are politely called, have in early times greatly conduced to the melioration of the law and the advancement of justice. But their existence at any time can hardly be said to be calculated to add to the popular conception of the sanctity of an oath in a court of justice; and their continuance till modern times must have tended to blind both lawyers and witnesses to the wickedness of perjury; and we should not forget that Common Recoveries continued in full operation till 1833.

That they had this effect upon lawyers is shown in many ways. Thus till the theories of Bentham upset the practices

of the Common Law Courts, the judges and counsel there were so convinced that the least temptation was sufficient to induce a man to commit perjury, that they would not receive the evidence of any one having an interest in the result of an action. Such persons were said not to be credible witnesses; by which was meant that they were so certain to swear what was false that nobody could believe them. As the persons who know most about the facts of a case are usually the persons most interested in its result, how the courts ever contrived to come to proper decisions is hard to understand. In the Court of Chancery, on the other hand, interested parties were allowed to swear not only as to all they knew, but as to a great deal they did not know. Evidence by

affidavit was, and to a certain extent still is—though the practice has greatly altered since the Judicature Acts—not evidence at all. For instance, suitors constantly swore to the accuracy of the arguments of their counsel. The affidavits, in fact, were drafted by counsel, and really consisted of a statement of the case for the party for whom they were drafted. Wise men swore them without reading them. The late Mr Henry Labouchere himself told me that he did. He added, with a nice delicacy of feeling, that to read an affidavit before swearing it was nothing short of a reflection on your legal advisers, since it indicated that you thought you knew better than they did what it was best you should swear. This practice led to the old saying that truth will out,

even in an affidavit. I myself remember one extraordinary instance of the recklessness with which affidavits are sometimes made. It was in a dispute over boundaries, and an affidavit of the "oldest inhabitant" was produced in which the deponent swore that the boundaries as delineated in a plan annexed were the boundaries as he remembered them in his youth. When the oldest inhabitant was produced in court for cross-examination, it turned out that he was stone-blind, and had been so since his birth. So much for the sanctity which the courts attached to oaths.

All the same, I think the prevalence of perjury is principally due to the weakness (or strength) of human nature. As I have said in a previous note, most actions, at any rate on the Common

Law side, which are really contested, are much in the nature of dog-fights; or, if you like it better, of civil war, which the existence of the courts merely renders more civil. All the same it is war, and each party's one wish is to smash the other fellow; and he often does not care any more than a German what he does to smash him, provided he does smash him effectively. Occasionally the solicitors on each side share this feeling: when counsel are asked to advise on evidence, the solicitor or his clerk has been known to drop a hint that if any further evidence is necessary it can, in all probability, be obtained. Few solicitors, however, go the length of a Jewish practitioner from Whitechapel who, on delivering to a friend of mine the brief for the defence in an Old

Bailey case, said, "If you think the hevidence is not strong enough, Mr Black, just tell me vat you vant. I have some fellers round the corner ready to swear hanythink."

The witnesses now in worst repute are what are called expert witnesses—that is, witnesses retained and paid to support by their evidence a certain view on a scientific or technical question. We have all heard the old jeer about the three kinds of liars—white liars, black liars, and expert witnesses. Yet the expert witness is often not really a witness at all. He is a trained man who, like counsel, comes forward to maintain for a fee a certain view on an uncertain point, and to give his reasons for that view. I have more than once, when listening to an expert's "evidence,"

thought it was a pity he was sworn at all: it seemed to me like the old Chancery practice which I have mentioned, of swearing a suitor as to the accuracy of his counsel's argument. And, in fact, they regard themselves, and lawyers to a large extent regard them, as advocates. I remember once when a distinguished scientist was cross-examined as to a different view which had been maintained by him on the same point in another case, answering counsel indignantly, "You seem to forget, sir, that I, like you, was then appearing on the other side." And the judge seemed to think this reply was reasonable. And so it would have been had the scientific "witness" not been sworn on both occasions to tell "the truth, the whole truth, and nothing but the truth."

Women I have usually found much better witnesses of what they have seen than men. Men reflect on and draw inferences from what they have seen, and are apt to mix in their evidence what they surmise must have happened with what they actually saw happening: women usually tell just what they saw. Their evidence, however, is reliable only so long as their passions are not involved: when love of their husband or children, or hatred of their neighbour, enters into the question, not a word they utter can be trusted. They have no consciences.

One of the most painful incidents I have ever witnessed in a court of justice arose out of the devotion of a mother to her children. The facts of the case were undisputable. A carter had heard a woman screaming for help. He ran

to her assistance. He found her lying on her back on the road struggling with a man who was trying his best to cut her throat. The carter closed with the man, and after a fierce struggle in which his hands were badly wounded, he succeeded in overpowering the would-be murderer and securing his knife. The woman had to be taken to the hospital. There and afterwards, when giving evidence in the police court, her anger being still hot, she told the story as I have told it, adding that the would-be murderer was her husband. When, a month or two later, her husband was brought up for trial at the Old Bailey charged with attempted murder, the wife's anger had cooled a bit and she had reflected. Put into the witness-box to support the charge, she calmly swore that it was really

the carter who had attempted to cut her throat and her husband who rescued her. The horrified prosecuting counsel asked the judge for leave to cross-examine her on her statement in the hospital and her evidence in the police court. "It is not worth while," replied the judge. "Let the wretched woman leave the box." The poor creature thereupon burst into frantic tears and cried piteously, "Oh, my lord, my lord, don't send 'im to jile! If you do, you send my five pore children to the workus!" I wish writers in the Press would remember this little tale the next time they feel tempted to slate some judge or magistrate for letting a wife-beater off with a fine.

Coming to cross-examination of witnesses, a very experienced Q.C.—now a judge—said to me years ago, "If

you wish to lead a profitable or a pleasant life at the Bar you must school yourself to do your duty to your client without regret, without repentance, and without remorse." The truth of this is unquestionable. The barrister who feels pain before or after inflicting it on a witness is not likely to lead a happy life; and the barrister who, to evade such pain, permits a witness to bear false testimony against his client, is just as little likely to lead a profitable one. But the moral point of it is not so clear. Where, in this particular, does the barrister's duty to his client begin and end? Counsel's views on this point differ little, though their practices differ much. They may be summed up thus: The barrister's duty to his client begins with his readiness to inflict on witnesses

any pain which is honestly necessary to protect his client; it ends with his refusal to inflict on them any pain which is only necessary to please him. To the honour of the Bar, it may be said that the average barrister in practice rarely departs from this rule; the few who constantly permit themselves to be made the instruments of their clients' hate soon become marked men who are rarely retained in clean cases.

Bullying and insulting witnesses is another practice now generally disdained. The best cross-examiners seldom resort to it. Yet sometimes, with a particular kind of witness, it is the only effective way of cross-examining. A story is told of a witness who was extremely self-possessed in the box, and who told his story with a readiness and consistency

which suggested long and careful preparation. The experienced counsel who was to cross-examine him saw perjury, but he also saw that the only way of letting the jury see it too was by upsetting somehow or other the self-possession of the witness. He noticed that the witness's nose was very red and swollen, and the first question he put to him was, "Mr Jones, do you drink much?" The witness was startled and a little disconcerted by this unexpected question; but he quickly recovered himself and replied sensibly enough, "That, sir, is *my* business." "I see, I see," said the cross-examiner in a reflective tone; and then asked suddenly, "And have you any other business?" The witness's self-possession disappeared, and before he left the box every-

body in court saw that he had been lying.

Reviling witnesses was always more prevalent in Ireland than in England, and Daniel O'Connell seems to have been an adept in the art. Most of his recorded efforts, however, now appear to us mere vulgar abuse. The only one I remember which suggests humour was also very effective. It occurred in a case where the charge against O'Connell's client depended almost entirely on the evidence of a witness who happened to be a Dane. O'Connell secured his verdict by one disparaging sentence. Rising to cross-examine him, he said, "You say you are a Swede?" "No," replied the witness. "What are you then?" demanded O'Connell fiercely. "A Dane," replied the witness. With a

shocked look in his face and a shocked tone in his voice, O'Connell turned to the jury (who had, no doubt, vague notions as to the difference between Danes and Swedes) and said, "Gentlemen, you hear the prevaricating scoundrel!" And then he sat down, as if it was useless to ask further questions of such a witness. The jury acquitted.

The most common fault of inexperienced counsel is cross-examining too much. The wise maxim followed by old hands is, "When you have got what you want, sit down." How wise this is, a performance I once beheld in court will show. The late Lord Russell of Killowen — undoubtedly the greatest master of the art of cross-examination of my time—was the judge, and a very

junior junior was the cross-examiner. And for a time the youthful counsel cross-examined very well. He forced the witness, who seemed to be a witness of truth, to admit all that he was in a position to admit. He continued, however, after these admissions, to ask further questions. Lord Russell, with a very kindly intention, intervened. "Mr Jones," he said, "you have got all you want from this witness. Do you think it is prudent to ask further questions?" The new hand was too elated with his success to take the old hand's hint. "My lord," he answered, "I have just one or two more questions to put, and then I have done." "Very well," said Lord Russell resignedly. The youthful counsel put a number of questions which elicited nothing. Lord Russell became

visibly uncomfortable. He intervened again. "Mr Jones," he said, "you have got all you want. If you continue putting questions like these, you may get something you don't want." "Just one more, my lord," answered the youthful counsel. He put another question, and received an answer which damned his client's character. "And now, Mr Jones," said Lord Russell quietly, "you have got it."

For the benefit of "unlearned" readers, I may explain that many questions may be put in cross-examination which would not be allowed in examination-in-chief; and the question put by the youthful counsel was one of them.

There still is, undoubtedly, a good deal of abuse of the privilege of cross-examination. This, however, is now

found chiefly in the lower courts, and arises partly from the character of advocates who appear there, and partly from the fact that as a rule advocates do not regard the judges in them with the same respect, and the judges have not the same confidence in themselves, as judges of the High Court. But, as I said in another part of these rambling recollections, to the public generally a judge is a judge, and a court is a court; and so the sins of the lower courts are visited on the higher ones. The criminal classes discriminate better. One of them, when by any chance he is innocent of the offence with which he is charged, is always most anxious to be sent for trial before the "Red Judge," by which he means a judge of the High Court. He knows that, if he is tried

by him, he will not be convicted again merely because he was convicted before.[1] But, as I have said, to the general public a judge is a judge and a court is a court; and there's an end of it.

A romance of the Bar, which may well be true, but which, whether well-founded or only well found, is an apt illustration of this, is told of the same Lord Russell of Killowen. The legend runs that his lordship was one night at the Portland Club intent on playing

[1] The habit non-legal tribunals have of trying you for doing one thing and convicting you because you did something else was delicately indicated by the 'Times' newspaper lately when commenting on Professor MacNeill's election as M.P. for the National University of Ireland and his trial for participation in the Dublin rebellion. "Professor John MacNeill," it said, ". . . took no active part in the rebellion, but *having been tried by court-martial* was sentenced to penal servitude for life for his association with the movement which led up to it."

whist. He found two friends ready and willing to join in the game: the difficulty was over a fourth player. At last a young officer of the Guards was conscripted. On cutting the cards he came out Lord Russell's partner. Before play had well commenced, it became evident that the Guardsman had dined, not perhaps too well, but not certainly too wisely: he flung about his cards recklessly, and only laughed in a silly way when his partner remonstrated. Lord Russell, who, like Mrs Battle, loved the full rigour of the game, soon grew impatient, and at last lost his temper altogether. Flinging his hand on the table, he said angrily, "This is not whist; it is confounded tomfoolery." The young Guardsman stared at the Lord Chief Justice in surprise and irritation for a

moment. Then he said, "Keep on your feathers, old cock: there's no harm done." Almost speechless with rage at this insolence, the Lord Chief Justice asked in a hoarse voice, "Do you know, sir, whom you are addressing?" "Of course I do," replied the half-tipsy Guardsman; "but remember, my boy, you are not in your blasted old police court now."

V.

COUNSEL AND SPEECHES.

"A GOOD speech," Daniel O'Connell used to tell young barristers, "is a good thing, but never forget that the verdict is *the* thing." O'Connell himself, though as well qualified as any man ever was to make a good speech when a good speech was needed, never in practice forgot his own precept. His mind was always fixed on the verdict, and, according to the stories told of him, he was not over-scrupulous as to the way in which he got it—not even disdaining

occasionally to get it by a trick. It is told of him, for instance, that he did this once when defending in a case of agrarian murder. The chief evidence for the prosecution was that of the bailiff of the murdered landlord. This witness produced a hat which, he swore, he saw fall from the head of the masked murderer as he ran away, and which he and several other witnesses identified as a hat belonging to the prisoner. In cross-examining the witness, O'Connell, with the hat in his hand, said—

"You saw this hat fall from the murderer's head?"

"I did," answered the bailiff.

"And you immediately picked it up?"

"I did."

O'Connell looked closely at the inside of the hat.

"And I suppose you examined it outside and in?" he then asked.

"I did."

Still looking intently at the inside of the hat, O'Connell went on—

"And I suppose you read on the lining?" and O'Connell, appearing to read from the hat, spelt out the prisoner's name.

The witness, assuming he was reading, answered without reflecting—

"I did."

"My lord," said O'Connell, "I submit the case is ended. There is no name whatever in the hat."

If O'Connell never forgot in practice that the verdict was the thing, not a few of the counsel of his time appear to have done so. His was the age of

lawyer orators. All the Common Law barristers, or nearly all, seemed more anxious to win reputations for themselves than to win cases for their clients, and as a consequence many of those who were most renowned as speech-makers were very far from being equally renowned as verdict-getters. It is told that at the time when Brougham and Scarlett[1] divided the lead of the Northern Circuit between them, a junior counsel, going the circuit for the first time, got into conversation, at the end of the assizes at York, with a jury-

[1] Originally I told this story of Brougham and Pollock, afterwards Lord Chief Baron; but Sir Frederick Pollock has been good enough to point out to me that his father in his Recollections tells it not of Brougham and the Chief Baron, but of Brougham and Scarlett, afterwards Lord Abinger, C.J., to whose style of advocacy it is singularly appropriate.

man who had served throughout them. He asked the juryman which of the two leaders he considered the greater advocate. "Oh," answered the juryman offhand, "there's no comparison: Brougham is head and shoulders above Scarlett."

"But," objected the young barrister, "you have been all through finding verdicts for Scarlett."

"Ah, that was his luck," answered the juryman. "You see, it so happened that he was always on the right side."

People generally think that lawyers are by nature a very loquacious set. That is too often true enough, especially when they are paid by the length of their speeches, as they are under the system of daily "refreshers," as they are called. But when they are not paid for their

speeches, they are, of all professional men, the least addicted to oratory. At their festive gatherings in London at the Inns of Court, or in the provinces at circuit or sessions messes, speech-making is firmly forbidden. When loyalty requires that the King's health should be drunk, it is proposed in Hall by the treasurer, on circuit by the leader or the junior — the practice differs on different circuits — in the briefest way. He rises to his feet, raises his glass, and says, "The King." The other counsel rise to their feet, repeat "The King," and drain their glasses. When the judges are entertained by the circuit mess — as they usually are once, at least, on each assizes — the guests' health is proposed in the same simple fashion.

Of course there are occasional aberrations from this recognised practice. It is said that when the late Sir Frank Lockwood was junior on the North-East Circuit, he got into trouble through departing from it. The assize judges were Mr Justice Lush and Mr Justice Shee; they were the guests of the mess, and it was his duty to propose their health. He did not do so in the lawful fashion; but instead he, in his wilful way, asked the mess to drink to wine and women, coupling the toast with the names of Mr Justice Lush and Mr Justice Shee.

But Lockwood was an irresponsible sort of being, born to get into trouble as the sparks fly upward. According to all accounts, in his very first case he was nearly being committed for contempt of court for giving a conscientious,

unimaginative Chancery judge an accurate but unexpected answer. The case turned on the interpretation of an ill-drawn will. Only two views of its meaning were possible, and there were half a dozen or more persons interested in maintaining each view of the meaning. Instead of all the claimants interested in each reading joining together and briefing one counsel to represent them, each of the claimants chose—or his solicitor chose for him—to be represented separately, as too often is the case when the costs are paid not by the client but by the estate. Young Lockwood received one of the many briefs. It was marked modestly enough with two guineas for the hearing and one for consultation — that is, it was what is known technically as a "two

and oner." When the case came on for hearing, the judge was shocked at the number of counsel engaged, where only two were necessary.

"How many are there of you?" he asked angrily. "I have counted twelve; is that all?"

"No, my lord," answered Lockwood in a meek way, "I appear for So-and-so."

"And what did you come here for?" demanded the outraged judge.

Lockwood lifted his brief, glanced at the back of it, and answered briskly—

"For two and one, my lord; just for two and one."

To a certain extent, however, the public are probably right in regarding counsel as sometimes unduly loquacious. As I have said, the system of feeing counsel with

daily refreshers so long as the hearing continues puts a temptation in the way of counsel to lengthen their speeches, which it is to be feared some of them do not resist as firmly as they should. At any rate I have heard, especially of late and especially on the Chancery side, complaints, whether well-founded or not I do not know, about cases which might have been disposed of in days being prolonged over weeks. In justice, however, to the Bar, it should be remembered that not infrequently a long speech is due to the anxiety of counsel to do everything possible for their client. Some "fighting" counsel are notorious for the length of speeches they make in losing cases. The late Mr Oswald was one of these. I remember listening to him in an appeal where the court was obviously against

him. If he stated the argument in favour of his client once, he stated it in different forms half a dozen times. The judges, and especially Lord Esher, showed openly their weariness; but Oswald went on without pause and without pity. At last he raised a new point. One of the Lords Justices protested. "Now, Mr Oswald," he said, "you know you said nothing about this in the court below." "No, my lord," answered Oswald; "but that was because before I reached it the judge stopped me." "Stopped you!" exclaimed Lord Esher in tones of amazed incredulity. Then after a moment's reflection his lordship leant over the bench and asked Oswald in a confidential stage whisper, "Tell me: how did he do it?" Oswald was for a moment taken aback. Quickly pulling himself together, he an-

swered bitterly, "By leading me to believe, my lord, that he was with me."

If forensic oratory has not become more terse of late, it has certainly become less florid. Nowadays, when a barrister indulges in the sublime and beautiful, it is because there is nothing else to be done, and he wishes to give his client what is known at the Bar as a good funeral. When this is the case, judges understand his position and make allowances for it. When it is not the case, judges are apt to get annoyed. What they want is a clear and plain exposition of the arguments and evidence on which the advocate relies; and most juries now look for that too. It was very different with many counsel even in my young days. The old tradition, to which I have before referred, that

counsel were entitled to treat their cases as opportunities for showing their own abilities as much as for winning their clients' cases, still lingered, more especially among defending counsel at the Old Bailey. The Old Bailey Bar then was much more distinct from the ordinary Common Law Bar than it is now. There are still counsel there and elsewhere who practise only in criminal courts; but these are few and far between: the bulk of Old Bailey practitioners who now practise in criminal courts alone are usually beginners who are trying to make their way by the "Rope Walk" to other courts; and most of them who attain any success usually make it. But formerly the Old Bailey Bar were a genus by themselves: they had their own way of life, their

own kind of work, their own mode of doing it, their own knowledge or want of knowledge of law, their own style of oratory. That style of oratory was high-flown in the extreme. Now the practitioner at the Old Bailey addresses the jury in the same plain and matter-of-fact manner as the counsel practising at country sessions or on circuit. If he attempts to do otherwise he is liable to get into the bad graces of the judge.

One or two of the old school survived till very lately. A story is told of about the last of them, who not long ago passed away to a well-earned rest amidst the regrets of his brethren at the Bar. I may repeat it, as it illustrates at once the style of the ancient Old Bailey man and the intolerance of it of the modern High Court judge. This gentleman had

severely cross-examined one of the leading witnesses for the prosecution, and when he came to address the jury he commented equally severely on the witness's evidence. At last he reached his climax. "Gentlemen of the jury," he said in a low, deep, impressive, and most solemn voice, "the Scriptures tell us that Pontius Pilate wrote on the outward and invulnerable wall of mighty Nineveh these terrible and tragic words, Mene, mene, tekel, upharsin, which, being interpreted, mean——" "The Scriptures," the judge snapped in angrily, "don't tell us that Pontius Pilate wrote any such words on any wall anywhere." Counsel stared for a moment at the judge, indignant and amazed. Then he replied with great dignity, "My lord, the Scriptures certainly tell us that

somebody wrote these words on some wall somewhere; and whoever the writer and wherever the wall, the principle is the same."[1]

I have spoken of the ancient Old Bailey man's knowledge or want of knowledge of law. Nowadays his knowledge of law is, as a rule, about as deep as that of the ordinary Common Law junior. Even in my young days it was different. I well remember being startled by a question put to me by one

[1] Another side of this same gentleman's style of oratory is illustrated by a story relating to the first sitting of a new judge at the Old Bailey. His lordship, whose practice as a barrister had never brought him to that court, heard during the sitting a tremendous roar which shook the building. "What is that?" he asked in a startled way. "Is it thunder?" "Not at all," replied the Treasury counsel, who knew it well, "it is only Mr —— in the Commissioner's Court applying for bail for his client."

of the leading lights of the Old Bailey. He was appearing in a libel case, and had been instructed by his solicitor to cite some cases to the court; and the question he put to me was how he was to give the references to them. I remember also when a judge, himself not very deeply learned — the more superficial a judge's learning is the more it shows—said to another of them, in his mincing way, "Well, Mr ——, all I can say is that on this point of law you and the learned Sir William Blackstone happen to differ," the counsel learned in the law responded calmly, "I can't say, my lord, I have heard before of Sir William Blackstone, so I suppose I may assume he is an Irish or Colonial judge, and if that is so I submit his decision is not binding on this court." But

possibly the best instance of a criminal barrister's ignorance of law comes from Ireland, where there is no criminal Bar.

Though there is no criminal Bar in Ireland, there are barristers there who never obtain anything but criminal briefs. The system of prosecution in criminal cases is different in Ireland from what it is in England. At the Assizes there, private and county prosecutions are unknown. All prosecutions are what are there called Crown prosecutions, and what would be called in England Treasury prosecutions, with this difference that they are conducted (as Treasury prosecutions are in England at the Old Bailey but not on circuit) by permanent Treasury counsel. The barristers who never obtain anything but criminal briefs in Ireland are often

junior Treasury prosecutors, and it is respecting one of these that the incident I refer to is related. It was told me, if I remember rightly, by my friend Mr Justice Dodd, P.C., of the Irish Bench; but it would not be fair to blame him with my version of it: I tell it as I recollect it after many years.[1] The prosecuting counsel had called evidence to prove that the prisoner had committed a very serious offence. On the completion of his case the defending counsel—Mr Andrew Porter, who afterwards filled for many years the office of Master of the Rolls with high distinction—entered into an elaborate examination of the law, with the object of showing that, admitting the prisoner

[1] Mr Justice Dodd informs me that the story as told here is quite accurate.

had done everything alleged against him, yet that would not make him guilty of the crime charged. Lord Chief Baron Palles, who was the judge, and who dearly loved a nice point of law and a good legal argument, listened to the learned, acute, and discriminating reasoning of Mr Porter with unconcealed pleasure. When the argument was finished the Chief Baron turned to the prosecuting counsel and said with a smile, "Well now, Mr ——, what have you to say to that?" The poor prosecuting counsel, who understood not a word of Mr Porter's argument, fumbled for a moment with his papers. Then he said indignantly, "Say to it, my lord, say to it? Why, it's blethers, it's all blethers! For goodness' sake let us get on with the case."

Most counsel in large practice develop tricks of manner or memory which sometimes prove inconvenient to their clients or themselves. I think it is Addison who, in one of his 'Spectator' papers, tells of the habit of a leading serjeant-at-law of his time of fingering a button of his coat while he was addressing the court. A client with a sense of humour, but with no other sense worth mentioning, thought it would be a good joke to cut off this button just before the serjeant began his argument in his case. He cut it off, and the result was that he had his jest and his opponent had the verdict. The late Lord Russell of Killowen was a slave to snuff. I remember once in a very heavy case, after he had commenced his opening speech, he felt in his waistcoat pocket for his snuffbox.

When he failed to find it he was visibly disconcerted. He went on with his speech; but, to the surprise of those who knew his usual clarity and readiness and did not know his want, it was surprisingly confused and halting. At length he could stand it no longer, so stooping to the well of the court, he whispered to his solicitor. The solicitor instantly rose and left the court. In a few minutes he returned and handed a small packet of snuff to the great advocate. The latter hastily took a long pinch, and Sir Charles was himself again.

A very embarrassing but very common trick of memory among advocates is forgetfulness of names. Many, whose recollection of the facts and principles in innumerable cases is perfect, cannot for the life of them remember the names of

these cases. Counsel so troubled never enter court without a list of the names of all conceivable cases bearing on points that may arise during the hearing written in a very legible hand, and kept handy for immediate reference. This device is also adopted to remind counsel of the names of the parties and witnesses in cases turning on questions of fact; but it proves less useful then, since counsel in the fervour of their addresses to the jury are apt to forget not merely the names but the list itself. This once happened to a counsel who afterwards occupied a seat on the Bench. He was addressing a jury in perfervid tones, and as he grew warmer and warmer the names of the plaintiff and defendant got more and more mixed. At length the judge intervened. "Mr Attorney," he said in a

pathetic voice, "so long as you consistently called the plaintiff, whose name is Jones, by the name of Smith, and the defendant, whose name is Smith, by the name of Jones, the jury and I could follow you; but now that you have introduced the name of Robinson without indicating in any way whether you mean it to refer to the plaintiff or to the defendant, or to both indifferently, we are beginning to get bothered a bit."

Nothing I have said must be taken as suggesting that the eloquence of the Bar has in the least degree lost its effectiveness. It has changed its character, but it is still as powerful as ever it was, not merely with judges and juries, but on the platform and in Parliament. Perhaps it would not be going too far to suggest that in Parliament it is more successful

than it has ever been in the past, and that this was one of the main causes of the recent outcry against lawyer politicians. And now, as in the past, it is not always the counsel who are most successful with juries who are most successful in the House. From Lord Erskine to Lord Russell of Killowen many great advocates, who stood in the very first rank as verdict-getters and forensic orators, have been more or less failures in Parliament; while counsel, famed more for their knowledge of law and their influence over the minds of judges—such as Selborne and Cairns—have attained foremost places in parliamentary debate. That is the case to-day. Of the many lawyers in the Lords and Commons who hold the ear of their House, most are at this moment Chan-

cery men who never addressed a jury in their lives, or Common Law men whose practice is of that severer kind which makes its owner less familiar with popular tribunals than with Courts of Appeal and the Privy Council.

VI.

COUNSEL AND STUDENTS.

Until lately a law student did not necessarily mean a person studying the law. In the good old days of the eighteenth century and after, men did not read their way to the Bar: they ate it. Once they had paid their fees for admission to an Inn of Court all they had to do to qualify for call to the Bar was to keep twelve terms. By keeping a term is meant eating a certain number of dinners in the hall of your Inn. There are four terms in each year; and so, if you ate the regulation number of

dinners in each term for three years, you had fulfilled all the conditions which qualified you for call, and enabled your Inn to declare to the world that you were a fit and proper person to reveal to it the law and receive from it the profits.

I think it must have been some recollection of this great notion which influenced the mind of an ancient barrister whom I happened to meet at mess in Middle Temple Hall when I was keeping my first term, now nearly forty years ago. He, with the reverence due to youth, was pointing out to me the way I should go if I wanted to arrive at the Woolsack. I chanced to say something about brains. "Brains!" exclaimed the old gentleman in amazement. "Brains be blowed! It isn't brains, my lad, that

bring success at the Bar: it is—" well, we'll say stomach. It is just possible my kind instructor was using the phrase in the same sense as did good Queen Bess when she told her troops at Tilbury that she had the stomach of a king; and in that case, after long experience, I am inclined to think that he was not far wrong; but from some other remarks which he made that night, and especially from the care with which he drew my attention to the figures of the Benchers as they left the hall, I gathered at the time that he referred to the assimilative organs in the most vulgar form and sense of the expression; and in that case, all I can say is that if he was right it is not strange I never reached the goal, for I set out on the road but poorly equipped in that par-

ticular for such a long and toilsome journey.

Of course this system of law students marching, like Napoleon's armies, on their stomachs to their objective, was not deliberately instituted by the Inns of Court. Like the British Constitution, it grew, and it grew just about the time the British Constitution, as we now know it, was growing. In "the spacious days of great Elizabeth" legal education was highly and carefully organised. John Stow tells us that there were then nine Inns of Chancery besides the four Inns of Court, and young students came to the Inns of Chancery "sometimes from one of the universities, and sometimes immediately from grammar schools; and there, having spent some time in studying upon the first elements and grounds of the law,

and having performed the exercise of their own houses (called Boltas Mootes, and putting of cases), they proceed to be admitted, and become students in some of the four houses or inns of court, where, continuing the space of seven years or thereabouts, they frequent readings, meetings, boltings, and other learned exercises, whereby growing ripe in the knowledge of the laws, and approved withal to be of honest conversation, they are either, by the general consent of the benchers or readers, being of the most ancient, grave, and judicial men of every inn of the court, or by special privilege of the present reader, there selected and called to the degree of utter barristers, and so enabled to be common counsellors, and to practise the law, both in their chambers and at the bar." At a time when

law books and reports of cases were not so plentiful as they are now, a more practical and thorough system of legal education could not be imagined that this system of teaching by lectures, discussions of cases, and other "learned exercises."[1] We will see shortly what these learned exercises became two centuries later.

[1] Coke did not share this flattering view of contemporary law-teaching. In his note on sect. 280 of Littleton's 'Tenures,' speaking of the discussions of cases and statutes, he says: "Now cases are long, obscure, and intricate, full of new conceits, liker rather to riddles than lectures, which when they are opened they vanish away like smoke, and the readers are like to lapwings, who seeme to bee neerest their nests when they are farthest from them, and all their studie is to find nice evasions out of the statute. By the authority of *Littleton*, ancient readings may be cited for proofe of the law; but new readings have not that honour, for that they are so obscure and darke." It is to be remembered in reading this that when it was written one of the newest readings was Bacon's Reading upon the Statute of Uses (cited to this day "for proofe of the law"), and that Bacon and Coke could scarcely be called friends.

It may just be noted in passing that it was this same time of the Tudors and early Stuarts which witnessed the two greatest and most characteristic achievements of English lawyers: I mean the law of trusts and the doctrine of valuable consideration. Both originated in the religious view—the early Chancellors were all clerics—that it is a sin to break a confidence reposed in you, and if you do break it you must be compelled to purge your conscience by giving up any benefit you may have gained by it. The Equity lawyers, who were always more ecclesiastical than their Common Law brothers, continued and continue to grant relief on this principle in the case of trusts; but the Common Law, in the case of contracts, broke in time altogether away from it, and established the very mundane principle

that where you make a promise for value given, then, confidence or no confidence, you must keep it, and, if you do not, you must compensate the person to whom it was made for any loss resulting — the broadest and most simple and most sensible principle on which the law of contract ever was based.

This little lecture on law is by the way. The road we are travelling is towards an explanation of how the Elizabethan system of legal education by teaching turned into the Georgian system of legal education by dining. In Elizabeth's time dining did accompany teaching in the Inns just as in the universities; commons were served in the Halls for the students attending the Reader's lectures and discussions and for the Readers themselves. But during the period following

the Revolution—that period which Disraeli was fond of describing as England's Venetian age, an age of sinecures, pluralties, and somnolence—the dinners were continued but the teaching ceased. Each Inn appointed its two Readers each year; but they delivered no lectures and held no bolts. "Learned exercises" were continued; but they were scarcely calculated greatly to advance or display the student's knowledge of law. This is what they consisted of: Before he was called the student who had eaten the regulation number of dinners and paid the regulation number of pounds, was called before the Bench. A paper was put into his hand by an official of the Inn. The student read from the paper, "I say that the widow shall have her dower." This sentence convinced the Bench so com-

pletely of the student's learning that he was not allowed to read any more. The senior Bencher bowed to the student, the student bowed to the Bench and retired; the "learned exercise" was over, and the performer was declared a fit and proper person to be admitted to practise the law, of which he had just shown to the satisfaction of his teachers his thorough knowledge.

In other words, the Inns of Court had ceased entirely to be what they originally were—schools of law. If any student keeping commons in their Halls thought that it would be wise before he became a lawyer he should learn a little law, he had to find instruction where he could. The usual way was to read in a barrister's chambers. You paid a hundred guineas a year to a special pleader or a

conveyancer, and in consideration of this were permitted to read his papers and see how he did his work. But you were entitled to no personal attention from the pleader or conveyancer, and in practice seldom got any. You had to pick up your learning from his papers, which were brought by his clerk to the pupils' room before delivery to the client; and a long, dull, and dreary job this picking up must have been.

The Reform Bill of 1832 proved in its result an awakening to many of the somnolent public bodies. Parliament began to inquire whether these were performing the duties for which they existed. The Inns of Court were the subject of two such inquiries; and the Committees of the House which made them intimated pretty clearly that in their opinion legal

education by dinner was not satisfactory. It was suggested that law should be taught again, and that men should not be admitted to practise at the Bar until they had passed an examination in at any rate the elements of law. There was, however, considerable difference of opinion as to the expediency of an examination for call, and for a time a middle course was followed: to be called, a student had to produce either a certificate of having passed the examination or a certificate of having read in a barrister's chambers.

For those "dandies and men about town," to quote Thackeray's words, "who wished for some reason to be barristers of seven years' standing," the usual course was to produce the certificate of having read in chambers. It was easier to do

this than to produce the certificate of having passed the examination, because to get the latter you had to pass the examination, but to get the former you had not to read in chambers: there were always plenty of benevolent barristers who, if you paid your money for reading in their chambers, let you take your choice whether you read in them or not. In fact, as I heard Lord Cozens Hardy, M.R., once tell, it was a meeting between Sir Richard Bethel—who was then Chairman of the Council of Legal Education—and one of these benevolent barristers that led to a change. The benevolent one had given a certificate to a young student with whom Bethel was slightly acquainted. Bethel asked him what he thought of him? The gentleman reflected, and then said he had hardly

formed any opinion, as he remembered meeting him only once, and that was at the Derby. So Bethel made it his business to get established a compulsory examination before call for all candidates for the Bar.

In order not to be misled by this statement, two qualifications of it should be borne in mind. In the first place, some conscientious counsel refused to give certificates of having read in chambers to students who had in fact not done so. But even here, if tradition is to be trusted, counsel was not really unkind. It is told that when a student applied once for a certificate, the barrister refused it on the ground that his clerk's journal showed that the student had during the whole year only on two occasions made his appearance at chambers.

"Ah, but I learned a lot," argued the student. "What was it?" asked the barrister severely. "Well, the first time I read a long opinion of yours on the liabilities of executors," said the student. "Well, what did I say?" asked the barrister. "I don't exactly remember," replied the student; "but I do remember that when I had finished reading it I said to myself, 'Well, I'm blest if I'll ever be an executor.'" "And what did you learn the next time?" asked the barrister. "Well, I read a long opinion of yours on the liabilities of trustees." "And what did I say?" "Well, I don't exactly remember," replied the student; "but I do remember when I had finished reading it I said to myself, 'Well, I'm d——d if I'll ever be a trustee.'" "Sir," said the barrister earnestly, "you shall have

your certificate. Your answers show that you have acquired a sound and discriminating knowledge of the principles of Equity, which, whether you become a barrister or not, will be of the greatest value to you throughout the rest of your life."

And the second qualification to be remembered is that at first the compulsory examination was not over severe, though probably it never was quite so easy to pass it as a story that is told would indicate. A student, it is said, who to the knowledge of all his friends had never read anything of the Law of Real Property, contrived to pass in it. Some one pressed the examiner for an explanation, and he got it. "My rule," said the examiner, "is to pass a man who gets fifty per cent of full marks. Now, I asked

him two questions. The first was, 'What is the Rule in Shelley's Case?' He answered that it had something to do with poetry. Well, that was wrong. The second was, 'What is a contingent remainder?' He answered that he was sure he didn't know. Well, that was right, and so I passed him."

These silver days of the slight knowledge of law, like the golden day of the no knowledge at all, as a qualification for call, are now past for ever. At last a course of study has been set, the mastering of which keeps the student busy during the three years he is keeping term; and an examination has to be passed which ensures that a man called to the Bar has a sound general knowledge of both Common Law and Equity. Neither is the industrious student left to

find his way as best he can to such knowledge: Readers and Assistant Readers have been appointed in every branch of the subject, whose duty it is, by expositions and advice, to give him the aid that every beginner needs.

The object to be attained by appointing these guides could not be better stated than it was by Lord Brougham in his evidence before one of the inquiring Committees. Students of law would, he said, "learn law better, and at all events they would learn it easier, and save themselves a great deal of fruitless labour in the acquisition, if they had the benefit of a learned and skilful professor, accustomed to teach." Unfortunately, in appointing teachers the Council of Legal Education, which was in 1852 established by the four Inns of Court to supervise

the instruction of their students, at first seemed to overlook the last words. It assumed that anybody who knew law could teach law, and not infrequently appointed elderly Q.C.'s as teachers, who never before in their lives had attempted to teach anybody anything. When I was a student the teaching staff consisted of my friend Mr James Bryce (now Viscount Bryce, O.M.) in Roman Law; a distinguished scholar and publicist in Jurisprudence; Mr John D. Mayne in Common Law; Mr Eddis, Q.C., afterwards a county court judge, in Equity; and Mr Barber, K.C., also afterwards a county court judge, in Real Property. I can say without hesitation that there were only two of these from whose instruction I derived benefit — Bryce and Mayne; and Bryce was a trained uni-

versity teacher — he was then, and for years before had been, Regius Professor of Civil Law at Oxford,—and Mayne had had, I believe, practical experience of teaching in India; but, at any rate, he had long practised at home on Indian Appeals, and one cannot conceive a better training for a teacher of law to beginners than years spent in expounding to the Most Honourable Privy Council the elements of Hindu and Mahomedan Jurisprudence. As for Eddis and Barber, they lectured to their dazed listeners as if these poor tyros were a bench of judges. But the distinguished scholar and publicist was to me the greatest disappointment. His delivery made it very difficult to follow what he said; but from what I was able to follow it seemed to me this did not matter much. His object,

or at least what he accomplished, was to make the simple difficult and the obvious obscure. Only one sentence of his remains in my memory. He had stated some elementary self-evident proposition and was beginning to "explain" it. He said: "This proposition always puzzles students, and is sometimes not clearly understood even by men of sense."

This practice of putting in old men to do new jobs has now been long abandoned. For years past young men, if possible with some experience of university teaching, have been chosen. If they "make good" they are retained, and when occasion offers, promoted; if they fail they are asked to retire. It would be unbecoming in me to say anything either in commendation or in criticism of the qualifications of any of

these Readers. This result, however, may be noted. Before the war desolated our seats of learning, the difficulty was to find accommodation for the swarms of students who wished to attend the lectures. Among those students every race within the Empire was represented: white and black, brown and yellow, coming from all climates and from the uttermost corners of the earth to study the laws of England. The Inns of Court had become, and, once the war is over, should become again even in a greater degree, the nearest approach yet made to an Imperial School of Law.

There has been a good deal of ill-informed criticism of the education at the Inns of Court. One point made is that the reason of the large attendance of students at the lectures was because

the lecturers were also the examiners. As a matter of fact, half the lecturers did not examine, and more than half the examiners did not lecture; and every student had to pass in papers which were neither set nor read by the lecturers. Another baseless objection is that the lecturers are young men thinking only of getting into practice, who treat their appointments merely as a means of making a little money until practice comes. This objection is based on the fact already noted, that the Council now fills vacancies not with old but with young men. What the critics forget is that it continues in office young men who prove their fitness until they become old. Of the present lecturers, more than half have been teaching under the Council for the last twenty years,

and many of them were teaching at the Universities before they were appointed by the Council. It is true they practise, and it is a good thing too. What the Council has succeeded in creating is a staff of legal teachers much the same as the staff of medical teachers of a hospital, who are also practitioners of what they teach. It is hardly too much to hope that if the Inns of Court continue their work on these lines, they will yet create a school of practical law such as has not existed in England since the great age of Elizabeth.

No doubt the school is at present capable of improvement, and no doubt it will be in time improved. This is not the season, however, when its class-rooms are almost denuded of students,[1]

[1] This was written during the Great War. Already the attendance of students has immensely increased.

to begin reforms. I may, however, be allowed to suggest two which I hope will be considered when better times come. One is that a building with proper offices and lecture-rooms should be provided for the work. At present the classes are moved from Inn to Inn from term to term, and the only permanent home of the school are two sets of chambers up three pairs of stairs. Another is that more tutorial teaching should be provided. At present, it is true, there is a director of legal studies who can be consulted by the students as to their reading. But one such person is not enough. Roughly, the course for the Bar consists of three groups of subjects—Common Law, Evidence, and Pleading; Equity, Real Property, and Conveyancing; and Roman Law, Constitutional Law, and Legal History—not

to mention special subjects like Indian and Dutch Law. It would, in my opinion, be of infinite benefit to many students if one of the lecturers in each of these groups was appointed to attend between certain hours each day of the educational terms, not only to advise students as to their reading, but to help them to surmount difficulties in their reading: with classes numbering from one hundred to one hundred and fifty men, it is clear a lecturer can give no such assistance to each student personally. However, the classes do not number so many students by a long way now, and till they do the matter is of small importance.

I have mentioned examinations, and when examinations are mentioned it is a sort of custom to cite what are called "howlers" from answers given in them.

These seem to be regarded by the public as funny. As a rule, the only thing funny about them is that the public can see any fun in them. In my time I have read thousands of answers from thousands of students both at the Inns of Court and at various Universities, and my experience is that the worse the answer the duller it is, which is natural, seeing that generally the worse the answer the stupider the student. I can now remember only one answer which was at once bad and good; and to this moment I am not sure that the fellow who gave it was not having a joke at my expense. It was at a class examination. I had been lecturing on the Jurisdiction of the Court of Chancery. The gist of my lecture was as follows: The Court of Chancery was called a Court of Conscience because,

unlike a Court of Law, it intervened not so much to protect a plaintiff from wrong-doing as to prevent the defendant from soiling his conscience by doing wrong; this was a religious more than a civil principle, and its adoption was due to the fact that all the earlier Chancellors were ecclesiastics;[1] and the way it was enforced was by the court issuing an order to compel the defendant to do himself what a man of conscience would

[1] A writer in the 'Law Quarterly Review' of January 1919, in a not unfriendly notice, questions this statement, and points out that most of the Common Law judges were also ecclesiastics down to the fourteenth century. But all the Chancellors were ecclesiastics down to the sixteenth century, the great Sir Thomas More being the first layman to hold the office. And, moreover, the Common Law judges were developing the customs of the realm based on civil principles, while the Chancellors were developing a new system of law based on their own notions of justice, which, as the results show, were influenced by, and indeed founded on, religious principles.

do, and if he disobeyed the order by imprisoning him for contempt of court; this process against the defendant personally gave rise to the maxim Equity acts *in personam.* The question I set was, "Why was the Court of Chancery called a Court of Conscience?" and the answer I received was as follows: "The Court of Chancery was called a Court of Conscience because it intervened to compel the defendant to soil his conscience; and it acted in this way because the early Chancellors were all ecclesiastics. Hence the maxim that Equity acts *in parsonam.*" [1]

[1] The late Mr T. H. Carson, K.C., told me of an extraordinary answer he once received at the Bar Final Examination. The question set was, "For what acts of his co-partner is a partner liable?" and examples to illustrate the answer were required. A Malay student wrote: "A partner is liable for his co-partner's contracts (*e.g.*, fraud) and torts (*e.g.*, murder) if done in the ordinary course of the partnership business."

VII.

JUDGES AND PRISONERS.

It was, I think, my friend Mr R. A. M'Call, K.C., who some twenty years ago told me of a conversation in the dock which some member of the Northern Circuit overheard. The prisoner was an Irish navvy who was charged with inflicting grievous bodily harm on one of a numerous force of policemen who had been engaged in effecting his arrest for being drunk and disorderly. When the indictment was read to him the Irishman listened intently; but as the reading

terminated in the usual declaration that his conduct was "against the peace of our sovereign lady the Queen, her Crown, and Dignity," he lost all grasp of the subject. Turning to his warder — who happened also to be an Irishman — he inquired in a loud whisper, "What does this mane, at all, at all?" "It manes," said the learned warder, "that you are being charged with batin' a policeman. Did you do it?" "Av coorse I did," answered the navvy in surprise. "What ilse am I here for?" "Well," replied the warder, "thin say, Not Guilty, me Lard."

When I heard this story I could not help thinking that if it had been the judge himself instead of the warder whom the prisoner had consulted he would in all probability have received the same advice. It may be due to a high sense of justice

or to an unconscious remembrance of the former inhumanity of the criminal law, or merely to the sporting instinct which every Englishman from the King to the corner-boy possesses, but it is a fact, whatever it may be due to, that an English judge and an English jury are always determined that every prisoner brought before them shall have a fair chance, and that nothing exasperates either of them more than proof or even suspicion that he has not been fairly dealt with, or that all the facts bearing on his case have not been fully disclosed. This feeling is so strong with many judges that I have often heard them practically refuse to accept a plea of guilty when they have a notion that the prisoner has been induced by what I may call the lower authorities to tender it; and also advise other prisoners

much in the same way to plead not guilty when there was no doubt of their guilt; but the judge wanted to hear the evidence of the prosecution, to ascertain if he could whether there was no explanation or extenuation of it.

This is the peculiar characteristic and especial glory of English criminal justice, and the point on which it differs most from criminal jurisprudence as I have seen it administered in law courts on the Continent. There is nothing singularly righteous in English criminal law even as it is at the present day; and in the past it was as cruel and even as brutal as any criminal law that ever existed since the world began. For centuries past, however, its administration, at any rate in the higher courts, has left little or nothing to be desired. Indeed in one way its

merciful administration was perhaps at one time not altogether a public benefit, since it was only the humanity of the judges which rendered possible the long continued inhumanity of the law. But for the judges' intervention every assize must for many a generation have been a new "bloody assize."

Felony was at common law a crime punishable on conviction with death, followed by attainder and forfeiture of the criminal's property. Benefit of clergy was relief from the death penalty extended on their first conviction of felony to culprits who could read and write. Now there were comparatively few felonies at common law, and all or nearly all had benefit of clergy; but during that time which Disraeli called the period of Venetian Government (which

was not altogether fair, I have always thought, to Venice), every petty legislator who objected to any conduct which he thought detrimental to his own interests introduced to Parliament a bill to make that conduct a felony without benefit of clergy. And apparently such a bill always passed. At any rate, at the time Sir William Blackstone wrote his famous 'Commentaries on the Laws of England,' the number of statutory felonies without benefit of clergy was no less than one hundred and sixty — a number which appalled even such a worshipper of the wisdom of English Law as was that famous jurist.[1] Such a code of criminal

[1] See 'Commentaries,' iv. p. 18. Blackstone was not the first great English lawyer and law-writer who was able to join a reverence for the wisdom of the law with a detestation of its brutality. Coke, writing at a time when the criminal law was less, but its administration

justice, if carried out strictly, must have led to revolution in the meanest-spirited race, and a mean spirit has never been

was more, ruthless than in Blackstone's age, is an amusing instance. He begins the Epilogue to the third part of his 'Institutes' thus: "Thus . . . we have made it apparent from the lively voice of the lawes themselves, that no country in the Christian world have in criminal cases, of highest nature, laws of such express and defined certainty, and so equall between the king and all his subjects, as this famous kingdom of England hath, being rightly understood, and duly executed, to the great honour of the king, and of the laws, and the happy safety of all his living and loyal subjects." A few sentences further on, however, he writes: "True it is we have found by wofull experience that it is not frequent and often punishment that doth prevent like offences . . . those offences are often committed that are often punished; for the frequency of the punishment makes it so familiar as it is not feared. For example, what a lamentable case it is to see so many Christian men and women strangled on that cursed tree of the gallows, insomuch as if in a large field a man might see together all the Christians, that but in one year throughout England come to that untimely and ignominious death, if there were any spark of grace or charity in him, it would make his heart to bleed for pity and compassion."

the characteristic of the English people; but that effect was saved by the ingenuity with which the judges discovered absurd grounds for quashing indictments and sensible grounds for assisting juries to acquit or the Crown to pardon prisoners where the crimes charged, though by law punishable with death, were in morals very small transgressions.

And the ordinary boast of old English lawyers, that torture was unknown to the law of England, is merely a boast, and a baseless one too. It is true torture to secure evidence or to extract confessions was unknown to English law. The absence of torture to secure evidence is due to the absence of Roman law: it was introduced into Continental law through applying to citizens when, so far as their political status was concerned, they had

become little better than slaves, the Roman law procedure which applied to slaves only. But the absence of torture to extract confessions was due to the fact that it was not needed, since in England confession was not, while on the Continent it was, a condition precedent to a sentence of death, with the consequent attainder and forfeiture.[1]

Judicial torture came into existence throughout Europe at the time when the court of the state may be said to have been ousting the court of heaven in criminal matters. The ordeal, which was the ancient form of trying culprits,

[1] Piracy, being an international crime triable by civil law, was subject to the Continental principle that a culprit could not be put to death judicially unless he had confessed his crime. It is worth noticing, as supporting the view stated above, that in charges of piracy torture could legally be applied to extort confessions. (See 27 Hen. VIII. c. 4.)

was an avowed appeal to God. The legal authorities, with the advance of civilisation, had begun to distrust this appeal; and in England they introduced instead an appeal to the judgment of the culprit's countrymen. At first this new form of trial was regarded as a favour, but as its superiority was proved by practice it became obligatory, and ordeal was abolished by statute. Still public opinion continued to regard it as a man's right to appeal to the justice of God, and insisted that no culprit should be judicially put to death unless he either confessed his guilt or submitted to be tried by the earthly tribunal. The Continental authorities showed their respect for this public opinion by torturing a prisoner till he confessed, the English authorities by torturing him until he con-

sented to be tried by the King's court. This was the English procedure: the prisoner on being brought before the court was asked, "Culprit, how wilt thou be tried?" If he responded, "By God and my country," he had agreed to be tried by the King's court; and the clerk of the court piously answered, "God send thee a good deliverance." If he did not he was said to stand mute of malice, and means were adopted to compel him to end his muteness. At first these means were by pegging him out in the prison yard and giving him nothing to eat or drink but stale bread and stagnant water on alternate days till he agreed to be tried or died. This, however, when the prisoner was an obstinate person, proved a slow process, and unduly delayed the business of the assizes. So in Henry IV.'s reign

pressing was added. By pressing was meant putting a wooden frame upon the pegged-out prisoner and piling heavy weights on it till he pleaded or burst. This was found to expedite matters greatly. Indeed in 1658, in the case of a Major Strangeways, the expedition was excessive; the man died in ten minutes. However, the proceedings here were somewhat irregular, since not content with piling weights on him—which was the strict legal way — the spectators jumped themselves upon the pressing frame. I suppose they were local attorneys who were afraid that if the criminal business was not hurried up their causes might have to stand over to the next assizes.

This pegging out and pressing business was called *peine forte et dure*, and I confess it seems to me a very re-

spectable form of legal torture. And it had to be resorted to pretty often in the case of prisoners with property and families, who knew that if tried they would be convicted, and who refused to plead in order to prevent conviction and attainder, and thus save their property for their families. In ordinary felonies the forfeiture of the convict's land was to the lord of whom it was held, the King having merely the use of it for a year and a day; but in high treason the forfeiture was to the King himself. This led to a difference in practice. When a prisoner charged with high treason stood mute of malice this was treated as a confession of guilty, and conviction and attainder followed. A very strange application was made of this principle, intended to favour the

King, on the trial of Charles I. He was charged with high treason against the Parliament and people of England, and he refused to plead. Accordingly he was found guilty without trial.

Peine forte et dure was not abolished till 1772. Then an Act was passed to make standing mute equivalent, in the case of all felonies, to a plea of guilty. In 1827 this was altered, and the law became what it now is: when a prisoner refuses to plead the court enters for him a plea of not guilty, and the trial proceeds just as if he himself had pleaded it.

John Evelyn has given us a very vivid description of torture on the Continent to extract confession. Dating from Paris, 11th March 1650-1, he writes: "I went to the Châtelet or Prison, where a

malefactor was to have the question or torture given to him, he refusing to confess the robbery with which he was charged, which was thus: They first bound his wrist with a strong rope or small cable, and one end of it to an iron ring made fast to the wall about a foote from the floore, and then his feete with another cable, fastned about 5 foote farther than his utmost length to another ring on the floore of the roome: thus suspended and yet lying but aslant, they slid an horse of wood under the rope which bound his feete, which so exceedingly stiffened it, as severed the fellow's joynts in miserable sort, drawing him out at length in an extraordinary manner, he having onely a paire of linnen drawers on his naked body; then they questioned him of a

robbery (the Lieutenant Criminal being present, and a clearke that wrote), which not confessing, they put an higher horse under the rope, to increase the torture and extension. In this agonie, confessing nothing, the Executioner with a horne (just such as they drench horses with) stuck the end of it into his mouth, and poured the quantity of two bouketts of water downe his throat and over him, which so prodigiously swelled him, as would have pittied and affrighted any one to see it; for all this, he denied all that was charged to him. They then let him downe, and carried him before a warme fire to bring him to himselfe, being now to all appearance dead with paine. What became of him I know not; but the gent. whom he robbed constantly averr'd him to be the

man, and the fellow's suspitious pale lookes, before he knew he should be rack'd, betraied some guilt: The Lieutenant was also of that opinion, and told us at first sight (for he was a leane, dry, black young man) he would conquer the torture; and so it seemes they could not hang him, but did use in such cases, where the evidence is very presumptive, to send them to the gallies, which is as bad as death."

Now John Evelyn has here stated the practical defect of Continental torture. Whatever may be thought of *peine forte et dure*, at any rate it ended the matter: the prisoner either pleaded or died. As Continental torture always stopped short of death, it did not always end the matter, and indeed it sometimes put the court in an embarrassing not to say igno-

minious position. I remember reading in the 'Journal de Genève,' some ten or twelve years ago, of a case which resulted in this way. It occurred in the diary (then published for the first time) which a Genevese had kept when travelling in the Canton of Berne some time about the middle of the eighteenth century. It was a murder case. One brother was charged with the actual murder: the other brother with being accessory after the fact in giving him shelter when he was fleeing from justice. Both were tortured to extract confessions. The accessory gave way under the agony, and was duly found guilty and sentenced to death: the actual murderer was of sterner stuff and resisted all efforts to extract a confession, and he could not therefore be convicted or executed. The

court was accordingly in the awkward position of having to put to death the man who had not murdered anybody, but had only tried to save his brother, and letting live the man who had actually murdered the dead man. How it got out of this dilemma, or whether it got out of it at all, I do not now remember, and I am not sure the diarist told.

I have spoken of the humanity with which criminal justice is administered in the higher courts: this is sometimes not so noticeable in the lower courts. One practice, at any rate, I hope will not be extended—that of appointing judges with no other jurisdiction but to try criminal cases. Judging from my own experience, which I confess has not been very extensive, such men tend after a time to come to regard themselves as carrying

on a sort of war, with the police as their allies and the prisoners as their enemies. When I practised at Clerkenwell Sessions in my youth there were two judges there, and both of them, unconsciously no doubt, entertained this view. On one of them it had the effect of leading him always to go for a conviction; after he had secured that he was considerate and even lenient in his punishments; but if he did not secure it he warned the jury of their weakness by telling the prisoner if they had known his record they would not have acquitted, and if, in spite of this warning, the jury acquitted again, he discharged them with ignominy. The other gave each prisoner a fair run, but when the run was over and the prisoner convicted, he inflicted on him what was often an appalling penalty. Indeed, it was a

sentence which he passed in a case in which I prosecuted that led me incontinently to drop criminal practice, in which I had been doing very well. The prisoner, a man over seventy years of age, had been a watchmaker, but had had to abandon his trade owing to failing sight. He had an ancient wife and a paralysed daughter to support. Reduced to abject poverty, he resorted to picking pockets. I think he had already one conviction against him (but I am not sure) when I was instructed to prosecute him. The charge was of stealing a purse from a woman in an omnibus: the purse contained just sixpence. He was convicted; and no sooner had the jury found their verdict than the police ushered into court a procession of bus conductors, who all swore that they sus-

pected him of picking pockets in their busses. The judge passed a sentence on him of five years' penal servitude—five years on a man over seventy for stealing sixpence! The paralysed daughter, who was in court, screamed in horror when she heard the sentence, and had to be carried out in convulsions; the police looked startled; the jury looked uncomfortable; and as for me, I felt *particeps criminis*, and slunk out of court wondering why some decent person did not kick me, and swearing inwardly that that place would never see me more: and it never did. If that prisoner had been tried by a High Court judge, I doubt if he would have received five months. Men practising at these sessions tell me that under Sir Robert Wallace, K.C., who presides there now, such a thing would

be impossible; and, from my knowledge of Sir Robert, that is only what I should expect; but the principle of having a man dealing always and only with crime and criminals is, I think, thoroughly bad, and likely with some men to produce bad results.

I do not know what kind of cases are now dealt with at London Sessions, North and South; but in my young days the old practitioners there were always lamenting the days of their youth and deploring the modern degeneracy of spirit among the English people. They told me that when they started practice there it was no uncommon thing to find at a single sessions a dozen or more high-spirited but low-lived young men of wealth and sometimes of position on trial for outrages on policemen, private

enemies, or public decency. Now they said such things were unknown, and ninety-nine out of every hundred prisoners belonged to the class of habitual criminals, defence of whom was profitless in two senses, since they could pay no fees worth receiving and their faces alone were sufficient to convict them on view.

That criminal face is certainly hard to get over; when a prisoner possesses it, as most habitual criminals do, it is a difficult job to induce either judge or jury to believe in his innocence. And yet it is a type of face not infrequently borne by men of blameless lives. The late Mr Henry Labouchere once wrote of a distinguished lawyer politician still among us that he undoubtedly possessed a very legal face; but somehow it did not remind one of the bench or the bar or the well

where solicitors sit; and nevertheless you could not see it without thinking of a court of justice. And I myself when strolling about Paternoster Row and looking at the portraits of the reverend authors of the religious books so much sold there —especially those of the Methodist persuasion—often find my mind reverting to the days when I practised at Clerkenwell Sessions. And it has even been reported that the late Mr Justice Hawkins was requested to leave a certain suburban bowling-green, as the company—who did not know him—were respectable people and not accustomed to associate with ticket-of-leave men. This misunderstanding, however, may have been due not to the cut of his lordship's face but to the cut of his lordship's hair: my own opinion is it arose through the com-

bination. However, I have said enough to show that the stamp of face characteristic of habitual criminals is not confined to them alone.

Still, when one meets it in persons belonging to a certain class of society, it, as one might say, carries conviction. A story is told of the late Lord Justice Mathew which shows its effect on his mind. His lordship was walking one morning up the Embankment on his way to court, when one of those rogues who swindle simple people by selling to them painted sparrows saw him and thought he looked a likely customer. Sidling up to the judge, he produced from under his coat the painted sparrow. "Pardon, gov'ner," he said, "but this 'ere bird flew inter my bedroom this morning. It seems a rare 'un: can yer tell me what

kind it is?" The judge took out his glasses and looked hard at the bird. Then he looked harder at the man. "No, no," he said thoughtfully, "I can't tell you what kind of bird it is, but from the company it keeps I should guess that it is a jail-bird."

VIII.

COUNSEL AND PRISONERS.

A LAW lecturer whom I knew was a gentleman with a hot temper and a caustic tongue. If there was anything that irritated him more than another it was being interrupted in his lecture by a question, especially when the question was silly, as such questions are apt to be. Once when he was discoursing on the subject of legal disabilities, he had naturally occasion to refer pretty often to idiots and lunatics. A student broke into his lecture to ask what was the difference

between an idiot and a lunatic. "I'll tell you," answered the lecturer grimly; "if you were born as you now are, you are an idiot, and if you became as you now are, you are a lunatic."

It would perhaps have been more accurate, and it certainly would have been more polite, if he had described an idiot as a person who never had any brains, and a lunatic as a person who had brains but had lost the use of them; after all, a man must have a head in order to go off it. Dryden has said that great wit is near allied to madness, but nobody ever suggested it was near allied to imbecility. Cunning is, however, near allied to it. Now the average habitual criminal is an imbecile or semi-imbecile, and he has much cunning, and it is just this cunning which gives the police and the lawyers

their greatest difficulty in dealing with him.

The average habitual criminal's imbecility is almost incredible. The rule concerning him is one criminal one crime. He learns how to sneak umbrellas at a hall door or luggage at a railway station or parcels from a street van, or to pick pockets, to snatch watches, or to play the confidence trick, and whichever of these he learns he does, and he does nothing else. So well is this known to the police that whenever a particular kind of crime is reported as prevalent in a district, they have no doubt as to the quarter in which to find the criminal, though they may not be able to find the evidence to convict him. And so persistent is the habitual criminal in committing his one crime, that you will often

find him arrested for committing it again on the very day he is released after "doing time" for committing it before.

This circumstance led my brother, the late Dr S. A. K. Strahan, who was both a barrister and a physician, to inquire into the cause of habitual criminalism, and he came to the conclusion that in most cases it was impulsive: the poor creature had a longing to do a certain act, which was so strong that he could not resist it. My brother wrote a paper setting out this view, and recommending, among other things, that instead of sending wretches suffering from this disease back again and again to prison, an indeterminate sentence not of a punitive character should be passed on them, and that they should be detained and treated

as mentally sick men until their minds showed some sign of improvement, and if after a reasonable time no such sign appeared they should be detained permanently, not as criminals, but as idiots. This paper he read before the British Association in 1891. It attracted very wide attention, and the lay press, which ignorantly misunderstood it as a recommendation of gentler treatment for persistent wrongdoers, raised a howl of indignation against it and its author. At the present moment almost everything he recommended has been made part and parcel of the law of the land; but he experienced only the persecution —he did not live to enjoy the success of a social reformer.

That is the imbecile side of the habitual criminal. The cunning side is usually as

noticeable. Sometimes it is shown in the way he commits his crime, sometimes in the way he hides all traces of it, sometimes in the astuteness with which he conducts his defence, and sometimes in the acting by which he deceives his judge and jury. I only once prosecuted in a murder case, and to this day I am not sure whether the prisoner did or did not deserve a hanging.

It was on the face of it a brutal wife murder. The prisoner was a degenerate of the first water, who, decently connected, had sunk into poverty and lived by what he could steal and what he could wring out of the labour of his wretched wife. That miserable woman had come home one night with less money than he had expected, and he began knocking her about as usual. This

time, however, he went a little too far, and she died. The happy relief came early in the evening. The murderer remained alone with the corpse all the long night. In the morning he issued from his room carrying a carving-knife, and finding a neighbour had, on leaving his cottage for his work, forgotten to bolt the front door, he entered the house and attacked the wife still in bed with the carving-knife, stabbing her badly in the face. Then he fled, and happening to find another front door on the latch, he entered another cottage and attacked the woman there. Some workmen heard her screams and rescued her and arrested him.

When he came for trial the defence set up was insanity. My instructions contained statements of the prison sur-

geon and a distinguished alienist, who had been sent down from London by the Home Office to inquire into the state of the prisoner's mind. Both were absolutely convinced that the prisoner suffered from the mania of persecution, and that it was under the influence of this mania he had committed the three crimes. In face of such evidence from my own expert witnesses and of the strong view of it taken by the judge, there was little chance of a conviction, and yet before the trial was over I had, and I believe many of the jury had too, grave doubts of the prisoner's insanity. From the moment he came into the dock he conducted himself, I thought, just a little bit too much like a lunatic. He professed to want to plead guilty, he interrupted his own counsel, and he

hurled abuse at his own witnesses. And yet when, in opening the case, I suggested that possibly his attacks on the two women and his conduct generally since the murder might be intended to suggest insanity, I saw him start violently; and when the judge asked the jury whether it was necessary to call evidence for the defence, I saw a leer of satisfaction show itself on his face. The judge, whose eyesight was far from perfect, saw none of these things; but I think some of the jury did, and suspected that his antics in the dock were mere acting, for they would not take the judge's hint, and it was only after witnesses for the defence had given evidence of the existence of insanity in the prisoner's family and under strong pressure from the judge that they reluctantly acquitted. The evi-

dence of family insanity took the police by surprise, and I was not astonished to learn later that on investigation they were far from satisfied that it was true.

I say the jury reluctantly acquitted under strong pressure from the judge. That to any one accustomed to criminal courts elsewhere is one of the most striking characteristics of English criminal courts. Rarely has an English judge to appeal to an English jury for a conviction: not unfrequently he has to appeal to them for an acquittal: everywhere else the juries are only too ready to acquit, and not unfrequently the judge's heaviest and most disagreeable duty is to urge on them to convict when public justice and public safety alike demand it. In Ireland, north and south, this is sometimes the case, not merely in political or

agrarian offences, where fellow-feeling may affect the jurors' minds, but in ordinary crimes where their own well-being and protection are at stake. We have all heard of the case of highway robbery tried at Tralee. The evidence for the prosecution showed that highway robbery in Kerry had become a public danger, and that the prisoners were the leaders of the robber band; yet the jury acquitted them. The presiding judge showed his view of the case by requesting the High Sheriff to detain the innocent men in custody until he had got a good start on his way back to Dublin.

But Kerry, it may be said, is a county by itself even in Ireland. Did not Baron Dowse allege that once when he was the judge of assize there, when the jurymen in waiting were directed to go

into the box to be sworn, they all instinctively went into the dock instead? All the same, dislike or rather irreverence for the law, and in a lesser degree for its representatives, is common throughout the country, and by no means confined to the poorer or disloyal classes. Even the judges themselves have not the same respect for the letter of the law as English judges. Professor Dicey, K.C., has told me how much he was struck by this on one occasion when on a visit to Dublin he was invited to a seat on the Bench in a criminal court. The case being tried was one in which everybody's sympathies were naturally and rightly with the prisoner; but there was not and there could not be any doubt that, however justified morally he might be, he had deliberately committed the offence

charged against him. An English judge would have directed the jury that they must convict, dropping a hint at the same time that the prisoner was not likely to suffer severely if they did; and the jury would have promptly convicted. The Irish judge, a Tory and a Protestant, told them that undoubtedly the prisoner had broken the statute made in that behalf, but, he added, they would be a queer set of Irishmen if they could not find a way of getting round an Act of Parliament. Of course the jury acquitted.

And this irreverence for the law extends, as I have said, in a lesser degree also to the law's representatives. For instance, the bearing of English counsel towards English judges is far more respectful than that of Irish counsel towards

Irish judges, though the social position of the latter in the small world of Dublin is infinitely higher than that of their English brothers in the great world of London. I cannot imagine, for instance, a junior counsel retorting on a judge who interrupted him, as my friend Professor Sinclair Baxter of Trinity College, Dublin, told me an Irish junior did. The action was one for breach of promise, and the defendant was very far from being in his first youth. Counsel for the defence saw that both judge and jury looked somewhat coldly on his client's case, thinking no doubt that he was old enough to know better; and he tried to warm their feelings towards him by dwelling on the fact that he was an orphan. "Ach," said the bored judge, who was reputed to be himself given to

philandering, "I'm an orphan myself." "Well, my lord," responded the junior a little tartly, "all I can say is that if ever your lordship finds yourself in the same position as my unfortunate client, I hope the jury will take that circumstance into consideration in assessing the damages against you."

I myself am inclined to regard this want of reverence for the law as due not to any sympathy with crime, but mainly at least to the fact that the law in Ireland is not Irish law: it is the law of the stranger; and however just it may be—and once it was very unjust—it commands no loyalty and allegiance as an institution native to and racy of the soil. In England it is very much the reverse. The whole civilised world has produced only two great systems of law — the

English and the Roman — and between them they now divide it. Englishmen did not forget this when their law was inhuman; they are not likely to forget it now when it is humane. But something must also be allowed for the national temper. The Englishman is strong and sensible, but he is slow in observing imperfections in anything he has become accustomed to. Unfortunately, however long an Irishman may be accustomed to anything, its imperfections are the first thing he sees in it, and if he is a true-born Irishman it is often the only thing he sees. Sometimes this difference of nature reminds me of the explanation an American Sunday-school teacher gave to one of her class who found some difficulty in understanding how if God was almighty the Devil

should have so free a hand in human affairs. "Oh," she explained, "God is almighty right enough, but the Devil is a deal quicker."

I have already spoken of the humanity with which the criminal law is administered in England. I should also speak of the purity. In no foreign country I know anything about is a charge of corruption against a judge regarded as too ridiculous for even the most foolish to suggest; that is the case in England, and not merely in England, but in every country which derives its system of law and legal administration from England. During the Irish land war, when hatred of the law and of its administrators was rampant, while charges of bias, cruelty, and brutality were freely made, no one so far as I observed ever breathed

a suggestion of bribery: everybody felt that to do so would be to write yourself down a fool. And the same is the position, I am told, in India, Africa, and the Crown Colonies, so far at any rate as white judges are concerned. Attempts are still made in India to bribe judges, but the only effect which follows is disaster to the parties who make them. I have heard of a litigant who suggested to his counsel that it might be prudent to send a present to the judge who was to try his case. The counsel was greatly shocked, and, what impressed his client more, cautioned him that if he did such a thing he would certainly ruin his chance of success at the trial. The case came on, and the counsel noticed that the judge displayed a marked leaning in favour of his client, and finally

he decided for him. After the trial the client sidled up to the counsel and whispered, "Ah, sahib, I did send a rich present to the judge." The counsel was aghast. "Sent him a present!" he said in horror; "you can't mean it?" "Oh yes, sahib, I did," replied the client; "but remembering your honour's advice, I sent it in my opponent's name."

I have stated in connection with the murder case in which I prosecuted that the judge's sight was not as good as it might have been. Defective vision is nearly as great a deficiency in a judge or counsel in witness cases as defective learning or defective hearing.[1] Most

[1] One of the most trying experiences counsel and witnesses have is with half-deaf judges. Dickens, in the 'Pickwick' trial, has given a not over-coloured picture of what happens before them. Sometimes, however, judges appear deafer than they are, and persons who presume

counsel when cross-examining a witness never take their eyes away from his face unless it is to cast a significant glance now and then on the jury when they have made a point; and very often the whole course of their cross-examination is determined by their observation of the demeanour of the witness under it. A story is told of a case in which certain wills were produced which the claimant under them said he found and his opponent said he forged: the

on their weakness are painfully surprised. I remember the celebrated Mrs Weldon having such a mishap. She was arguing one of her innumerable cases before Bacon, V.C., who certainly was far from strong in the ear. She had been speaking for some time wh n the judge seemed nearly asleep. "Ah, my lord," she said, addressing the people in court rather than the court, "I fear your lordship does not follow me." "Oh yes, I do, Mrs Weldon," replied the judge quickly. "So far, you have been quite intelligible."

peculiarity about them was that the later the will the more favourable it was to the claimant. Counsel while cross-examining him noticed that from time to time he moved his hand nervously to his breast pocket. "What have you got in that pocket?" counsel suddenly demanded. The witness started, and then said, "Nothing but private papers." "Let me see them," said counsel. The witness demurred, on the ground that they had nothing to do with the case. The judge ordered him to produce them. There proved to be only one paper, and it purported to be another and later will leaving the witness everything.

With judges clearness of sight is equally important; they decide what to believe and what not to believe nearly as much by what they see as by what

they hear. That is the reason why the Court of Appeal, where the judges do not see the witnesses, is so reluctant to upset the decision of the court below, where the judge has seen the witnesses, on a point of fact. I have heard of a certain Chancery judge who was so notorious for the briefness of his notes of evidence, that when a case coming before him was one in which an appeal was probable, the parties agreed to have a shorthand report of the proceedings. In an appeal from him the Court of Appeal read the shorthand report, and were puzzled to make out why he had found against the plaintiff, whose uncontradicted evidence seemed to it to establish his claim. The court sent for the judge's note, in the hope that it might enlighten them, and it did. It consisted of a vigorous drawing of

an oily-faced, evil-looking person. Above the portrait was written "The Plaintiff," and below it "And a blasted liar."

I have already told of the lamentations which in my youth I used to hear from the old practitioners at Clerkenwell Sessions over the decline in the class of prisoners who came there. Since then I fear things have gone from bad to worse at the whole criminal bar, so far as such a bar now exists. There are from time to time exceptional cases, usually City frauds, or what the French call crimes of passion, where the defence is able and willing to pay heavy fees; but members of the criminal bar seldom get these: usually a fashionable common law counsel is briefed at any rate to lead the defence. Dock briefs are more common: these are briefs consisting of a copy of the depositions taken

before the committing magistrate, with a back marked a guinea, handed by the prisoner from the dock to one of the counsel in court, no solicitor being employed. These usually go to youthful counsel, who, having nothing else to do, are very glad to take them; but sometimes counsel of good standing accept them either for personal reasons or because the case is one of public interest.

My friend the late Gerald Geoghegan —whose early and tragic death deprived the criminal bar of one of its ablest advocates—told me of a singular experience of his with a dock brief. A solicitor who knew Geoghegan informed him one day that a man Geoghegan had known many years before as a fellow-student at the Temple, had got into trouble for stealing a gold watch and chain. He said he

would like Geoghegan to defend him, but he was too poor to pay any reasonable fee. Geoghegan, in his generous way, said at once that he would take a brief from the dock. After he received the brief he had an interview with the prisoner, and came away convinced that the prosecution was a piece of malignant revenge by a former friend. He defended with fervour, and the jury acquitted. The next day he had a letter from his dock client saying how grateful he was for Geoghegan's kindness, and asking him to accept a small present in place of the fee he could not pay. Later the present arrived by registered post. It was the stolen watch and chain.

Of course, whatever the thief intended, Geoghegan handed the watch and chain to the police, who restored it to the rightful

owner; for whether the thief knew it or not, his acquittal, while it prevented his ever being prosecuted again for the theft, did not make the stolen property his. Many thieves do not know this, but some do. I remember being told of a case where the charge was one of stealing a pair of breeches. A young barrister, briefed from the dock, defended and, much to his delight, secured an acquittal. The prisoner showed no desire, however, to leave the dock. "You are free, my man," said the young counsel loftily. "You can leave the dock." "I'd rather wait," whispered the client, "till the prosecutor leaves the court." "Why?" asked the young counsel. "Because," whispered the client, "I have them on."[1]

[1] I remember Sir Andrew Porter, M.R. in Ireland, very lately deceased, telling me of an early experience

As I have told in another place of the tragedy of my last prosecution, I may, perhaps, tell now of the comedy of my first defence, though it is against myself. It was a dock brief. The prisoner was a very pretty young woman of what is called doubtful character — though in her case there was no doubt about her character whatever—and the charge was of having stolen a considerable sum of money from a gentleman "friend." When she came

of his which was the converse of this. He had defended a prisoner against whom the chief evidence was a hat, which was found by the police on the scene of the crime, and which several witnesses identified as belonging to the prisoner. Sir Andrew, who defended, contrived to throw so much doubt on the ownership of the hat that the jury, on the direction of the judge, acquitted the prisoner. After the prisoner left the dock there was a scuffle between him and the police. His lordship demanded to know what was the matter. "Me Lard," answered the acquitted man indignantly, "the olis won't gimme me hat!"

into the dock she said she had the depositions, and wanted to be defended by counsel. "Well," said the judge in his most genial manner (as I have said, the prisoner was a very pretty young woman), "there is a row of young barristers on the back benches; any of them will be glad to take your brief." I was sitting on a back bench; I was very young, and my new wig and bands and my clean-shaven face made me look even younger than I was. The prisoner glanced along the benches, and then, much to my consternation, she pointed to me and said, "I'll have him." But consternation is no name for what I felt when, turning to the judge, and apparently explaining to him the reason of her choice, she added, "He's a nice-looking boy."

I was deeply vexed at the time by

this remark; but the times change, and we change with them; and now if any woman, pretty or otherwise, could truthfully say the same thing of me, I should be pleased.

IX.

YOUNG LIFE IN THE MIDDLE TEMPLE.

"The Inner for the rich man,
The Middle for the poor;
Lincoln's for the gentleman,
And Gray's Inn for the boor."

THIS is one form of an old rhyme which most barristers have heard in various forms, some not suitable for publication, as the newspapers say. It must have been composed when Gray's Inn was at the worst of its fortunes, for it was not true of it in its early days, and it is not true of it now. Gray's was once the

greatest Inn of Court, and it will for ever be the Inn associated with the mightiest name in English Law—that of Francis Bacon, Lord Verulam, Chancellor of England and Treasurer of Gray's Inn.

Still, no doubt when the rhyme was first written there was, as there is still, much truth in it, so far at any rate as the three other Inns of Court are concerned. Lincoln's Inn was and is the Inn for gentlemen. It is still the home of the Chancery counsel, who, as everybody knows, maintain a higher standard of culture than do those of the Common Law Bar. There is no doubt but the more intellectual and cleanly work of equity attracts highly educated and refined men more than the rough-and-tumble of common law practice; and so it is not to be wondered at that Lin-

coln's Inn should be full of gentlemen and scholars. Nor is it to be wondered at that it guards its precincts with a certain reserve and reticence not shown by the other Inns, though, unlike the Inner and the Middle Temple, it does not, nor, so far as I know, ever did, reserve its chambers for its own members. But if it opens its chambers to outsiders it does not open its gates. By a queer coincidence the Temple, Lincoln's Inn, and Gray's Inn have each about the same number of entrances—some seven or eight. While the other Inns keep all theirs open to everybody who likes to enter till ten at night, Lincoln's Inn closes its to strangers—all at seven and some at five. Even members occasionally are in doubts as to how they can get in, and when they

are in, are in doubts as to how they can get out. This practice, I suppose, arose from the aversion of the gentlemen to too free intercourse with "the οἱ πολλοί," as Gilbert says.

And the old rhyme's reference to the two Temples still holds good. Among common law men the Inner is to this day the Inn of the rich men. That is perhaps why it is such a dull place as compared with its cosmopolitan neighbour, the Middle. King's Bench Walk and the Gardens are delightful; but the Hall is commonplace. Paper Buildings are an anomaly as are Temple Gardens in the Middle. But all round the Middle is the beautiful and piquant sister beside the plain and dull one. Most of its buildings are quaint and of another world, and its ancient hall has a charm no other hall

I have ever seen equals. It is Elizabethan, and in it Elizabeth herself watched the performance by Shakespeare's company of Shakespeare's plays. Nor is that the only glorious literary recollection attached to the Inn and its buildings. Among its residents were Evelyn, Selden, Blackstone, Goldsmith, Johnson, and Thackeray; and among its members were Raleigh, Clarendon, Fielding, Congreve, Rowe, Cowper, Burke, Tom Moore, Sheridan, De Quincey, Dickens, and Blackmore. Gray's Inn can boast of Sidney and Bacon; Lincoln's Inn of More and Macaulay; the Inner Temple of Beaumont, Wycherley, and Lamb;[1] but what other place of the

[1] This list of illustrious literary names connected with Inns other than the Middle Temple is not intended to be exhaustive. I mention only the greatest.

same size in the whole world can show a list of the illustrious in literature approaching this?

The Temple, whether Inner or Middle, differed in my young days from the other two Inns in one respect. Lincoln's and Gray's had even then ceased to be the residence of their younger members. Gray's Inn's chambers, high and low, had been given up to solicitors and newspaper men; now they seem to be occupied largely by women writers. Lincoln's Inn's chambers were used almost entirely as business places for practising barristers and for solicitors who lived elsewhere. But the higher floors of the houses in the Temple were then filled as dwelling-places by the younger barristers and the older students of the two Inns. Things have changed since that

time. The two Inns' younger members have now, like so many of our brave soldiers, "gone West," but in a different and less noble way. The "rough comfort and freedom" which, as Thackeray has said, "men always remember with pleasure," are not enough for the present-day youth: he wants comfort without the roughness, and he does not care for freedom; so he has gone to bachelor flats or furnished apartments in St James's or South Kensington, or Bayswater or the suburbs, according as his taste and allowance suggest. Let us hope that one good effect of the Great War will be to make him more of a man in the future.

When I first joined the Middle Temple young men were still as Thackeray knew them. Those of our junior members who

had homes in or about London naturally lived there, though even among them there were exceptions; those who came from the provinces or from Scotland or Ireland looked to the Temple as their new home, just as lads going to Oxford and Cambridge look to their colleges as theirs. Resident chambers were then allotted only to members of the Inn, and were allotted by seniority; consequently, as the demand was great, he was regarded as a fortunate man who secured a set while still a student. I myself did not go into residence until I was called, and then I came in as the sub-tenant of a friend who had secured a set of four rooms, two of which he did not need.

That was nearly forty years ago, and yet I remember the first night I slept in the Temple as distinctly as if it were

yesterday. I had been lodging for a short time before at Denmark Hill. That place was very much as it was in Ruskin's day—a quiet village composed chiefly of large Victorian villas, with great gardens, and a few terraces of quaint Georgian houses. Open lands lay between it and Dulwich and Norwood. My lodging was as still by night and day as a house in the Chilterns or the Cotswolds. The evening I took possession of my rooms in the Temple I had been to the play, and I came to Temple Gate just as the theatres and music halls were pouring out their population. As I walked up to Temple Gate, Temple Bar, though it was near midnight, was "roaring" more fiercely than it roars at midday. Thousands of people were hurrying home

along its footpaths; its roadway was crowded with buses and racing cabs and hansoms. I thought to myself what a contrast my new lodging would be to my old one. I knocked at Temple Gate. When I went in and the door was closed behind me, I was astounded. The stillness of Denmark Hill was as nothing to the stillness of the Temple by night. The whole tumult and turmoil of the street without departed as if by magic; and as I walked down Middle Temple Lane, the silence about me was so deep that I was startled by the sound of my own footsteps.

And what a contrast my Temple rooms were to those I had left at Denmark Hill! There, though the house I inhabited was of respectable antiquity, I had at least most of the fittings and

conveniences of modern life: here I had none. My chambers, which were among the most ancient in the Temple, and which I had never before seen after dark, were up three pairs of gloomy, winding, and rickety stairs; the rooms were divided from each other by thin partitions of wood so warped by weather that the wind circulated freely through it, and so decayed by age that it filled the whole air with a dull, dead smell; the ceilings were low, cracked, and yellow, and hung down in the centre like inverted umbrellas; and there was no supply of water or light — light being provided by lamps or candles (I chose, like most Templars of that time, candles, since, though they might not give as much illumination as lamps, they gave less smell), and water being provided by the

laundress, who fetched your allowance of what Thackeray calls "that cosmetic" from Pump Court each morning, and who was very discontented if you required your allowance to be more than of the regulation quantity. And yet I am one of those who, to repeat Thackeray, always remember the rough comfort and freedom of the Temple with pleasure. Still, when I got a chance, I removed to more commodious chambers.

The laundresses of the Temple are a class by themselves. They succeed to their positions by inheritance or family arrangement: the lady who "did" for me most of my years in the Temple received hers from her mother, who was my first laundress, as a marriage portion. They are very kindly and considerate to the young gentlemen for whom they

labour, provided they do not demand too much tidiness. Nothing will persuade them to keep themselves fairly clean; it has been said that they are called laundresses because they never wash. The extent of the services they render is strictly fixed by ancient custom, to which they as strictly adhere. To residents they come twice a day—once in the morning to "do" your sitting-room, and once in the afternoon to "do" your bedroom. They are also supposed to prepare your breakfast. Mine prepared my breakfast for a month or two after I went into residence; but she made such a botch of it that by the end of that time—when I had found sufficient courage to speak to her—I forbade her messing with it any more. After that I cooked my morning meal myself—in

the winter on my sitting-room fire, in the summer on a spirit-lamp; and with a little practice I did it, I think, very well.

There were at that time many senior students and junior barristers living in the Temple, and we all knew one another more or less; but we congregated in sets. Each set consisted of men who, as a rule, had known one another long before they ever saw the Temple—men who had been old schoolfellows or college chums. It is impossible to describe how close the friendship between them was or how intimate were their lives. We differed very much in our circumstances and in our success in the struggle of life; but no man was ever allowed by the other men of his set to go under, however badly fortune had behaved to

him. If he was short of cash he applied, as a matter of course, to one of his friends who was not; and the friend, as a matter of course, supplied his deficiency. Seldom indeed was this mutual generosity imposed upon. I myself heard of only one case. A gentleman who had got greatly behind in his rent was turned out of his chambers. He at once went to a prosperous and dandified member of his set and explained his position. This was just at the commencement of the long vacation. "Billy, my boy," said the dandy friend, "you have come to the right shop. I'm starting off to spend the long abroad; you jump into these rooms till I come back: that will give you time to look about you. And, Billy, you'll be wanting a whisky now and then. Well, there's

the key of my cupboard; it contains six dozen John Jameson; but keep the door locked, for the laundress likes it." Billy jumped in as suggested, and his dandy friend went abroad. When Michaelmas was drawing near and work was once more beginning to come in, the dandy returned. He found Billy still in possession. After a friendly chat the dandy said, "I'm done up with the long journey home: I think I'll have a whisky." Billy handed him the key of the cupboard. He opened it, but all the Jameson was gone. "Well, Billy," said the dandy, a little ruefully, "you have had plenty to drink while I was away." "I have," answered Billy shortly. A little put out, the dandy thought for a moment and then said, "Well, I suppose my mother will expect to see me. I think I'll dress

and dine with her to-night." He went to the wardrobe. On opening it, to his amazement all his clothes were gone. "Hillo!" he exclaimed, "what the deuce has happened to the dozen suits and overcoats I left here?" Billy replied calmly, "Well, you see, you left me plenty to drink, but you left me nothing to eat, and so," taking a fistful of pawn tickets out of his pocket, "I had to dine on your clothes."[1]

[1] The intimacy of their friendships did not in any way diminish the young Templars' domestic affections, as the following tale, vouched for by an old resident, shows. A youth returned from the long vacation with an umbrella, the gift of his doting mother, which bore on a silver band round the handle his name and address. One night not long after his return he came back to chambers decidedly exhilarated. His stable companion was annoyed. "Get to bed," he said, "you're stupidly drunk." "I may be drunk," replied the young man, "but if you knew what I did with my 'brella you wouldn't say I'm stupid." "Lost it, I suppose," said the

Men of the same set usually find it convenient, if not absolutely necessary, to spend their days separately. Most of us had some other employment besides the practice of the law, which itself occupied little of our time. Literature, or rather occasional journalism, was the most common; but reporting law-cases, writing law-books, conducting civil service and university examinations and many other things, were also to many of us modes of industry and sources of income. Not that most of us actually required such income: we usually had allowances sufficient to provide for our needs; but they

friend. "No, no," answered the young man, looking very knowing, "that's what I'se 'fraid of—mother's gift, you know; but I remembered my name and address was on the handle, so I just stuck a stamp on it and posted it at the Charing Cross letter-box. It'll be 'livered all right to-morrow, you'll shee." And it was.

were very far from being sufficient to provide for our pleasures; and we were at the age when pleasures are sweet, and we were willing to work for them. When the day's labours were over, however, we forgathered for the evening, which was sometimes prolonged into the night till "the winds were sighing low and the stars"—or even occasionally the sun—"were shining bright." When commons were on we dined in Hall, one of the set arriving early to secure a mess for us by turning the forks according to custom, for at that time the Hall was often crowded: now young barristers have ceased to dine as well as to live in the Temple. When commons were not on we dined together, usually at one of the old taverns which then flourished in Fleet Street—the Cock, Dick's, or the

Cheshire Cheese. Only the last of these survives; and it has become the resort of American ladies, who show their devotion to literature and their ignorance of history by going there under the delusion that the great Dr Johnson once frequented it. We seldom went farther west for dinner than the old Gaiety Restaurant, which has also disappeared. After dinner we adjourned to chambers for a game of cards; or we went to the Temple Forum in Fleet Street, or the Society of Ancient Cogers in Salisbury Square, to indulge in free speech for ourselves, and sometimes to pay for free drinks for others; or we witnessed, from the pit, a Gaiety burlesque, or a Surrey pantomime, or a tragedy at the Wells, or, best of all, a Gilbert and Sullivan opera at the Opéra-Comique, or later at the

Savoy. Not unfrequently we crossed the silent and deserted City and penetrated into the boisterous and crowded East End. Whitechapel Road, Petticoat Lane, Leman Street and its theatre, Ratcliffe Highway and its dancing dens, were familiar to us. Some of these, and particularly the last, were far from safe resorts for young gentlemen at that time, and more than once we were warned by the police of the risks we were running; but so far as I know none of us ever came to the slightest harm. My own recollection is that we were nearly always treated not merely with courtesy, but with deference — like "young princes come to visit their father's subjects," as Thackeray says. At any rate, London was even then the safest of the great cities of the world, for which I think

we have to thank the people at least as much as the police. I have been more often in imminent danger during the few months I have spent in Paris, Brussels, and Amsterdam than during the forty years I have lived in the capital of Europe: I understand that New York is now the capital of the universe.

The most dismal times we Templars experienced in those old days were the festive seasons. Most of us at Christmas and Easter could find shelter at the houses of relatives or friends; but some of us could not, and some of us who could had work which tied us to town. And town, when everybody else was rejoicing, was to us a place of misery. The Temple was nearly uninhabited, and from being delightful it became

desolate. I remember a friend of mine, left alone in it at Eastertide, becoming so desperate that to bring up a semblance of Easter at home he got a dozen eggs and boiled them hard, and ate the whole lot at one meal. He lived, I understand, the rest of the vacation on physic.

My work—and I did a great deal of it—was of a kind which left me free to go when and where I liked during the holidays, and many a pleasant visit I paid to country houses when things were dreary in town. Sometimes friends went with me, and sometimes these friends were not over-judicious. I remember going with one to spend Christmas at a bungalow at Birchington in Kent. The day after we arrived an icy wind was blowing in from the sea.

My friend, who hated cold, did not wish to go out; but our host was eager to take us around to display to our admiring gaze the beauties and amenities of the shore. As we crawled along the chalk cliffs, shivering in the biting blast, he stopped, and turning to us, said proudly, that there was nothing between where we stood and the North Pole except the sea. My friend answered that he believed there was not even that. Our host took this too complete agreement with him not at all in the spirit in which it was offered, and we were never again invited to his bungalow, which I regretted, because I understood that Birchington is a tolerable enough place in the summer.

There were, however, two festivals which brought us nothing but delight,

provided we could contrive to get away from our work to enjoy them, which was not always easy, since they both came round when the courts were sitting. One was the Derby, the other the University Boat Race. It was regarded among us as a sort of high treason to sport not to partake in their delights; and when any of us happened to have a case—which was not very often—fixed to be heard on one of the days, the tricks and devices we resorted to in order to get it postponed to a more convenient season were marvellous in their ingeniousness and duplicity. We had good countenance, however, for these tricks and devices in some of Her Majesty's judges of sporting tastes, who resorted to similar practices themselves. A story used to be told of Mr

Justice Hawkins, which is characteristic if it is not true, but I believe it is true. He had one heavy case on his list for Derby Day. The leading counsel for the plaintiff was a certain distinguished K.C., notable for the austerity of his life and the contempt with which he regarded all the follies and frivolities of man. Hawkins sent for this K.C. the afternoon before Derby Day, and asked him as a personal favour to apply to have the case allowed to stand over till the day after the Derby. The K.C. was anxious to oblige his lordship, but could not imagine any ground on which to base his application. "Oh, simply say personal convenience," said his lordship. "You may be sure I'll raise no difficulties." So just before the court was to rise the puritanical K.C. duly

applied as requested. Hawkins, with his usual perversity, demanded sternly what the personal convenience was on account of which he was asked to waste the public time. The K.C. was irritated, and was proceeding to explain that he did not care much whether the case stood over or not, when his lordship hastily granted his application. But Hawkins was irritated too, and when the court rose he took his revenge. Leaning over the bench he said in a bantering whisper, which all in court could hear, "Ah, you wicked old humbug, *I* know where you want to go to-morrow!"

We Templars were then such clubbable fellows that most of us had at least two clubs—a stately one in Pall Mall or St James's Street, which we joined as a

duty and frequented very little, and a homely one in the neighbourhood of Fleet Street or the Strand, which we joined for our pleasure and frequented very much. My homely club was the Savage, then housed in the Savoy. It was composed of journalists, most of whom were also barristers, actors, artists, and entertainers. Journalists then had not become mere gramophones through which you hear their proprietor's voice, but were independent writers and thinkers, and excellent company; and the members of the club really were what they still call themselves, "brother Savages." Every night entertainment could be found among them; but Saturday night was the night. Then there was a house dinner followed by a sing-song, as there is still. It was my habit

to bring my Temple friends to these festivities; and it is a little pathetic now to remember the heartiness with which we youngsters applauded the singer, laughed with the humourist, and admired the skill of the conjurer and ventriloquist. Ah, it is a good thing to be young. Pity it is that "youth is stuff will not endure."

"Oh, the mad days that I have spent!" says Justice Shallow, "and to see how many of mine old acquaintances are dead!" Life in the Middle Temple in my youth was not quite so mad as life in Clement's Inn was in the youth of Justice Shallow, according to his own account. So far as I know, none of us ever, like Falstaff, broke a man's head at the Court gate, or, like Shallow himself, fought a fruiterer behind Gray's

Inn. But perhaps Shallow's story is a little over-coloured. Falstaff, though he admits that he and Shallow had heard the chimes at midnight, suggests as much; he says that every third word of it is a lie. However that may be, in one respect his story ends like mine: "And to see how many of mine old acquaintances are dead!"

X.

THE LIFE OF A LAWYER.

In his earliest novel Disraeli makes his hero, who is himself, speak very disparagingly of the life of a barrister. The best prospects it holds out to a man, he says, if I remember rightly, is port and bad jokes till fifty, and then a peerage. Such a career may certainly not be very attractive to a genius with the aspirations of a Disraeli, but to men of lesser brains or lesser ambitions it is not without its charm — a charm which has fascinated generation after generation of the flower

of the Universities, and led hundreds to adopt a profession which in its turn too often leads to a life, such as another of Disraeli's heroes described, in which youth proves a blunder, manhood a struggle, old age a regret.

Perhaps I have overstated the charm of the Bar as a career. What attracts the ablest men to the Bar is not so much the career at the Bar as what that career may lead to. It is said that the Bar leads to anything, and that is true if we include the workhouse. And most of the ablest men who come to it regard success at it as merely the first step on the ladder of ambition, and, as we know, some of them climb from it to the topmost rung. But many men as able as these never get beyond the first step, and then they are as unhappy as those

who have entirely failed. Many years ago I had a severe disappointment. One of my friends then was a man almost of genius, who had attained to the highest position but one in the legal world. He was dying, and from his deathbed he sent me a letter of sympathy. Life at the Bar, he said, even when apparently successful, was full of disappointments. "When I was your age," he added, "I never thought I was to die a mere lawyer."

Whatever the attraction that brings men to the Bar may be, it remains to-day as strong as ever it was. Before the war drove every young fellow worth his salt into the army, the number of candidates who presented themselves each year at the final examination for call came close on a thousand. Of this vast number about one-half came from

India and the Crown Colonies. Most of those coming from India intended to practise at any rate till they got an appointment. Most of those coming from the Crown Colonies already held appointments, and were getting called merely for the purpose of more effectively discharging the duties of them, a grounding in practical law being found useful both as to their work and as to their promotion. Many of the English students from India belonged to the same class.

And, strange as it may appear, at least half of the home students reading for the Bar have no intention of following the law as a profession. Thackeray, in 'Pendennis,' gives a description of the men who dined in Middle Temple Hall in his time. "Among the student class,"

he says, "there were gentlemen of all ages, from sixty to seventeen; stout grey-headed attornies who were proceeding to take the superior dignity,—dandies and men about town who wished for some reason to be barristers of seven years' standing—swarthy black-eyed natives of the Colonies, who came to be called here before practising in their own islands—and many gentlemen of the Irish nation, who make a sojourn in Middle Temple Lane before they return to the green land of their birth." That description still applies, subject to one or two alterations. Gentlemen of the Irish nation now form a very small proportion of the students, and those there are have no intention of returning to the green land of their birth: the reason of this is that the rule which, in Thackeray's time, re-

quired men reading for the Irish Bar to keep four terms in England has long been repealed. Again, the dandies and men about town who wish for some reason to be barristers of seven years' standing are no longer conspicuous among the students, if they are to be seen at all: the compulsory examinations have pretty well put a stop to their ambitions. But the places of both of these classes have been more than taken by civil servants, army officers, and medical men, who, like the officials from the Crown Colonies, find a practical grounding in law, and the evidence of that which is supplied by call to the Bar, very helpful both for practice and for promotion in their respective professions.

In England, till lately, law was the

Cinderella of learning. The Universities neglected the teaching of it, and seemed to regard degrees in it as things to be given to deserving but uneducated persons. Thus, when a soap-boiler endowed a chair of something in stinks, the grateful University rewarded him with its LL.D. The authorities who did this would have been amazed if any one had proposed conferring a D.Lit. or D.Sc. on the benefactor, and, as for a D.D., they would have regarded the very suggestion to confer it as rank sacrilege; and yet the D.D. would seem the most appropriate, as these worthy people are usually regular churchgoers, and so the one learned subject they know something about is Divinity. This practice no doubt is due to the fact that the ancient Universities are situated far from the capital,

which is the seat and centre of the living law; and even now the men who teach law at them are separated almost altogether from its practice. The Inns of Court, when they were a school of law, were a school of practical law. That position they are trying now to regain; and that they are not trying in vain is shown by the fact that so many men in different professions, where a knowledge of practical law is useful, come to them to get it.

These, however, are not the gentlemen with whom we are at present concerned. We are dealing with those students who study with the object, as Thackeray says, of "mastering that enormous legend of the law, which they propose to gain their livelihood by expounding." If that legend of the law was enormous in Thackeray's

time, it is still more enormous to-day. Every year the multitude of reports becomes more multitudinous; every year Parliament produces, as his royal patron told Gibbon he did, "another d—d big book"; and the unfortunate student who proposes to gain his livelihood by expounding the law must acquire some sort of a knowledge of all these.[1] When Roman law had got into the same state, Justinian immortalised himself by making an orderly collection of excerpts from the legal treatises (which corresponded to our reports), and an

[1] To the student in despair at ever being able to master completely the great "legend of the law," it may be cheering to know that nobody, in fact, ever does. Even the superlearned Lord Coke, when accused of having married his second wife in an unlawful manner, had to plead that he did so through ignorance of the law on the point. See Mr Arthur Underhill's article on Law in 'Shakespeare's England.'

orderly collection of constitutions (which corresponded to our statutes), and then enacting that all the rest of the treatises and constitutions should be burnt. The sooner something of the same kind is done in England the better.

But the important thing is the burning. Without it all attempts to codify branches of law by consolidating statutes are worse than useless. No sooner does a case arise on a new statute than somebody or other is sure to raise the question whether the new statute was intended to alter the old law or not; and so the only effect of the codifying is that the lawyer must master not merely the law as stated in the statute, but the law as stated in the reports. Besides, it usually occurs that the statute is so badly drafted that it is the terror of students. It seems

incredible, but still it is the commonest of occurrences, to find text-writers, in commenting on a new Act, stating that it is impossible to know its effect until it has been interpreted by the court. Sometimes the interpretation is beyond even the court's powers. It was, I think, Chief Baron O'Grady who had to confess to a jury that he could not understand a new Act dealing with sheep-stealing. He had read it over and over again, he said dejectedly, and the only thing in it that was clear to him was that when a sheep was stolen somebody or something was to be hanged; but for the life of him he could not make out whether it was the man who stole the sheep or the man that owned the sheep or the sheep itself.

Assuming that the student has acquired

sufficient knowledge of this enormous legend of the law to pass his call-examination, and so become entitled to try to gain his livelihood by expounding it, he has various courses open to him. He may join the Old Bailey mess and North or South London Sessions (as they are now called), and look out for criminal work; or he may try his fortune at the Common Law Bar, joining a circuit and "opening" as many sessions on it as he can work; or he may settle down to conveyancing and equity work. All three have their attractions and their drawbacks. The criminal way is usually the quickest and always the cheapest road to practice, and now a commencement in it often leads to good civil work. A man going that way has not necessarily to read in chambers, nor

has he the expenses of circuit life. Commencing at the common law is more pleasant, but also slower and more expensive. There the beginner must learn in chambers to master the practical use of what he has learned from his books, and is likely to have to bear heavy expenses going circuit before he gains any fees worth mentioning there. Chancery is to the beginner the hardest way of the law, but probably in the end the most certain. He has, even more necessarily than the common law man, to read in chambers; and the work he first gets is now the most wearisome and the worst paid of all legal work—conveyancing; but if he persists long enough he is pretty sure to get court work too, which is well paid, and of all legal work the most clean and intel-

lectual. Which course, then, a young man just called should choose depends partly on his purse and partly on his taste.[1]

The common law, as might be expected, is the course which attracts most men who can afford it. A youngster with a few hundreds a year to spend can pass his first half-dozen years at the common law bar very pleasantly,

[1] One is often asked what course a young man should take to win success at the Bar. Advice seldom helps an aspirant for legal honours: it is useless unless he has plenty of patience and perseverance, and if he has plenty of patience and perseverance it is not needed; these qualities, without advice and without also any great intelligence, will bring him into practice. As Thackeray says, the necessary thing is steadiness—perhaps steadfastness would be a better word. As for his conduct while at the Bar and getting on, the late Lord Bramwell summed it up in a sentence: "Do right," he said, "and fear God; don't write, and don't fear women."

calling each morning at his business chambers, where he usually finds there is nothing to do, lounging over to the High Court, where he can occupy his time watching other men do cases, taking notes of the cases for them, or occasionally "devilling" a case for a friend who is too busy to attend to it himself, and sometimes doing a little work on his own account at a county court. This is his life in town. In the country it is as pleasant. He goes four times a year to the county and borough sessions, which he has opened, where he is sure to get from time to time a "soup"—that is, a brief for an official prosecution—such briefs being distributed in rotation among the members of the session's mess; and he goes three times a year on circuit, where, though he may get

no work, he gets much play and a little experience, and where, if he is a sociable fellow, he is certain to make friendships which will last his life.

Over thirty years ago I joined the Midland Circuit. The Midland mess was then still a real mess — that is, the same men constituted the body of it throughout the circuit, save perhaps in Aylesbury and Birmingham, the beginning and the end. I still look back with pleasure on those days spent in court listening to and discussing with other briefless ones the cases our busier friends conducted; the nights spent at mess over jolly dinners, with their *Duminy* and their still better *Pape Clement;* the morning walks along the banks of the Trent; the evening walks about the close of Lincoln's cathedral;

and the grand nights with their jokes and laughter and song, good-humour, good fellowship, and good wine. Of all the junketings of those times, the ones I liked least were those at which the judges were present. I never felt quite comfortable in their lordships' company: not that they were unpleasant—quite the contrary—but somehow or other when I watched their demeanour towards the Bar I could not help thinking of Raphael, who, Milton tells us, is an "affable archangel." I have been a guest at Bar dinners in Ireland, both when the judges were entertained and when they were entertainers, and I never there had that thought. Their lordships appeared quite human, and even suggested to me the English judges of old, who, as I have stated,

when on the bench never forgot they were judges, and never remembered it when they were not.

The favourite song sung on festive occasions on the Midland was John Peel, and I never hear it till this day but it "stirs my heart like a trumpet." The last time it reached my ears was one night on the Lido of Venice in the year before the war. I had been spending the day in the city, and returned very late to the Hotel des Bains. As I was leaving the next morning for Bologna, on going to my bedroom I went out on my balcony to have a farewell look at the Adriatic. Above me a great Italian moon filled the still warm air with light, below me the sea shimmered like a lake of quicksilver, and away on my left the white summits of the Julian Alps stood up

like spear-heads against the purple sky. Not the breath of a wind, not the whisper of a wave rippled the liquid silence of the night. As I looked about me suddenly a pleasant English voice began from a neighbouring balcony to sing that old hunting song, and in an instant I forgot the moonlight and the Adriatic and the Alps, and was once more back at my first grand night dinner on the Midland: we were at Nottingham, that song was being sung, and the whole mess was joining in the chorus. How I remembered it all! And how I remembered that, after dinner and song were over, I went with two other youngsters to have a stroll in the historic market-place: it was such a night as this—with a glorious moon flooding the great square with her beams—and as we rambled along the dark arcades we talked

of our hopes and prospects on the circuit. The two men who that night walked with me are long dead, and their hopes and prospects lie in their graves with them; and as for me—well, I have not seen Nottingham for twenty years, and never again shall I in its market-place go a-roving and a-dreaming "by the light o' the moon."

> O singer of Persephone!
> In the dim meadows desolate
> Dost thou remember Sicily?

But it must not be assumed that all is milk and honey in the land of the law, even on circuit: there are sure to be one or two objectionable persons in the mess. In my time there were several, and the worst of them was a certain young gentleman who might have been inoffensive but for the fact that his father was made a judge; and from the date

of that event onward he could not talk for five minutes without referring to it. His father was one of the feeblest beings who ever contrived to climb on the Bench; but I should be sorry to hold him guilty of all the imbecile views on law, literature, and politics with which his son charged him. At last the son's constant citation of his father's authority for his own foolishness got on my nerves, and I told him his father should never have been made a judge, which was true, but was neither polite nor politic, and led to a coolness between the son and me. It would have been much better if I could have dealt with him as Lord Morris dealt with the son of a Baron of the Exchequer Court, who suffered from the same weakness. One night this young gentleman referred to

"my father, the Baron," so often that Lord Morris was driven to desperation. "Dicky dear, Dicky dear," he said at last with deep pathos, "I wish to heavens your mother had been barren too."

Young common law barristers may think that I am, like that Emperor of the East of old, whom Lord Kenyon used to call Julian the Apostle, so absorbed in a state of things which is past that I have forgotten the state of things which is present. This is not the case: I merely like best to write about what I know best; and I know very much better how things on circuit were thirty years ago than how they are in this same year of grace. But I should say that younger men belonging now to circuits assure me that the old *camaraderie* of circuiteers is long gone. Few counsel,

they tell me, now go to more than one or two towns on their circuit; and few, when they do go, stay more than one or two days. This they blame on the county courts and the railways. The county courts, by creating constant work of a kind for juniors living in the country, have created that institution detested by the ancients, the local Bar. The members of a local Bar look to the county courts chiefly for their livelihood; the assizes are merely occasional events which give them an opportunity of doing a little High Court work, and they seldom attend them elsewhere than in the town in which they reside: as for work in London, it only comes in the shape of appeals from the assizes or county courts, and is like angels' visits, very welcome but very rare. Moreover, county court practice,

which, as I have said, is the local Bar's mainstay, is outside the circuit system: any barrister may hold a brief at any county court; so it happens that members of a local Bar on one circuit constantly meet at county courts barristers of another circuit, and so the homogeneity of circuits is destroyed. Added to this, the county courts have now absorbed so much of the work which was once done at the assizes, and the local Bar has absorbed so much of the assize work which is still done there, that it is hardly worth the while of the London men who once formed the band of brothers who went the whole circuit to go beyond the particular district in which their connections lie; so most of them content themselves with running by train from town to each of those districts, waiting till the

briefs are delivered (which is but one day), and if they receive none, returning immediately by train to town. Thus it happens that the London men are largely a different set in each assize town, and that seldom any reasonable number of them dine at mess for more than one or two nights, while the local men, having their homes in the assize town, seldom dine at mess at all. And so we get to this state of things, that after the first night or two of the assizes in a great town like Birmingham, you may find only half a dozen men at mess, scarcely one of whom knows intimately any one of the others. I speak now of what I have heard, not of what I have seen.

The pleasures and sorrows of circuit life, whatever they may be, are not for the man who goes to the Chancery side.

He remains all his career in town. After a year or more of reading in chambers he settles in Lincoln's Inn, and enters himself in the Law List as an equity draftsman and conveyancer. The first work that comes to him is conveyancing, which, I have already said, is the worst paid and most wearisome of legal work. Lord Bowen, after a year at it, entertained such a horror of it that he would go out of his way in order not to pass the chambers where he had laboured so painfully. It was not thus always. Formerly there were many conveyancers who refused to enter court, and a very agreeable life they led once they became accustomed to their work. But then solicitors sent them what is called common form conveyancing — that is, conveyancing which your clerk can do for you out of

any book of common forms. Now none of that comes counsel's way. When conveyancing comes now it is because it is so difficult that the solicitor himself will not run the risk of doing it, and thereby undoing himself; for the solicitor is liable in damages for his mistakes, which counsel is not. And while the conveyancing which comes to counsel is now always difficult, the fees paid for it are smaller than they were when most of it was easy. But still young counsel must take conveyancing if they want court work, and when they get court work they are well rewarded for their drudgery over the conveyancing: it is well paid, clean, and intellectual. Probably no man in any profession earns his livelihood in a pleasanter way for a man of mind and of refinement than a Chancery

junior in large practice. The matters he has to deal with usually are points of law with little dispute as to the facts, and little ill-feeling between the parties. The Chancery leader's work is not the same: now it is much liker the work of a Common Law leader than formerly, as they are generally retained only in witness actions.

The chief drawback of the Chancery Bar is the paucity of appointments open to its members. It has, indeed, at least its fair share of the High Court Judgeships, but it has few of those minor appointments which are the only ones open to the bulk of the profession. The consequence is that nine out of ten Chancery men have all their lives to look to practice for their livelihood, and though a man, if he can persist long enough, is

pretty certain to secure enough practice to provide a livelihood, as a rule that livelihood is laboriously earned, and is not over generous. The Common Law and Criminal men, on the other hand, can look to scores of such minor appointments as recorders, stipendiary magistrates, county court judges, and what not.

Talking of counsels' fees, those earned by even the most successful men, either at the Chancery or Common Law Bars, are not nearly so enormous in the bulk as people think or say. One hears of a fashionable leader receiving briefs marked a thousand or two thousand guineas. This sounds by itself tremendous; but such briefs are not knocking at any man's door every day, and when they come they mean many a day's work. One can easily see by the estates left by judges and

counsel that great fortunes are seldom made by them; very often what a distinguished counsel leaves behind him is less than that left by his own butcher or baker. Of all the barristers of my time, few were more successful, and none were keener after fees, than the late Sir Henry Hawkins. His chase after guineas brought on him the historic rebuke of Serjeant Ballantine, who reminded him that he could not take them with him when he died, and if he could they would melt. (By the way, his lordship was so fond of heat that he made his court to the counsel practising in it a perfect inferno in the summer—for other reasons it was not very different all the year round—and he hated draughts so much that it is said on respectable authority that when he was being put into the furnace

to be cremated, he was heard to murmur, "Shut that door: there's a draught.") He was regarded as having acquired an immense fortune, and yet when he died he left only about two hundred thousand pounds, which would be thought nothing of if he had been a successful coal merchant. It is true that at one time practice in Indian appeals to the Privy Council—where, as the saying was, you would not wink at a solicitor for less than ten guineas—and before Parliamentary Committees—long known as the Golden Gallery — brought large incomes to leaders; but unless rumour lies worse than usual, little money is made there now.

Disraeli, in his remark on life at the Bar with which this paper opens, talks of a peerage at fifty. No doubt a good many very successful lawyers do win a peerage about that age, but nowadays it

is usually merely a life peerage, or if it is a hereditary one, that is because the winner has no heirs. This is due to the fact I have just mentioned—the fact that few lawyers by the exercise of their profession acquire large wealth, or even wealth enough to support a peerage in their family without leaving the younger children penniless. Nearly every lawyer of my time who, having sons living, accepted a hereditary peerage, had wealth coming from other sources than the law.

In concluding these rambling notes, I am reminded of the art critic — he must surely have been a lawyer—who, when reviewing a picture of a man and his dog, wrote that the man wanted execution, and justice had not been done to the dog; and I cannot help thinking some readers may pass a similar judgment on these slight sketches of the

Bench and Bar of England. If they do, all I can say is that I have tried my best within the narrow limits I assigned myself to paint them as they are; and if the painter has failed to execute the judges or do justice to the counsel, it is his misfortune but not his fault, as Lord Morris said about a short-sighted man who had kissed—in mistake for his wife, he said—a very ugly woman. His lordship added that if the woman had been very pretty he should have been inclined to hold that it was the man's fault but not his misfortune. The same might be said of me if I had set down any tint in malice; but that I have not done, though I have, I suppose, as many pet aversions as most people, and for as much or as little reason.

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